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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 185

**RIN 3206–AN39**

## Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Final rule.

**SUMMARY:** This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986.

**DATES:** Effective: October 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** R. Alan Miller, Office of the General Counsel, Office of Personnel Management, 1900 E St. NW, Washington, DC 20415, *RAlan.Miller@opm.gov,* (202) 606–1700.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74)(''the Act''). The Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking, and (2) make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties.

OPM has updated the agency's monetary penalties annually since the passage of the 2015 Act.

This rule takes into account adjustments for the year 2018 based on inflation for that year. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M–17–11:

| CFR citation | Description of the penalty | Current penalty | 2018 inflation adjustment |
|---|---|---|---|
| 5 CFR 185.103(a) | Civil Penalty for False Claims | $11,181 | $11,463 |
| 5 CFR 185.103(f)(2) | Civil Penalty for False Statements | 11,181 | 11,463 |

This rule makes additional adjustments for the year 2018 based on inflation for that year. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M–19–04.

This final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act's amendments to the Inflation Adjustment Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly required the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment). The formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI–U).

### II. Calculation of Adjustment

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI–U.

The Office of Management and Budget published guidance on adjusting penalties based on the increase in the CPI–U between October of 2017 and October of 2018. *See* December 14, 2018, Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, Office of Management and Budget, re: *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* This guidance provided OPM with the level to which civil penalties should be adjusted as annual inflation adjustments following the initial necessary update to comply with the 2015 Act.

Office of Management and Budget Memorandum M–19–04 stated that the cost of living multiplier for calculating adjustments in 2018 was 1.02522. This multiplier is to be applied to the current level of civil monetary penalties for agencies. When OPM's current penalties of $11,181 are multiplied by 1.02522, the resulting penalty amount is $11,463.

### III. Procedural Requirements

*A. Regulatory Impact Analysis: Executive Order 12866, as Supplemented by Executive Order 13563*

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not ''significant regulatory action,'' under Executive Order 12866.

*B. Reducing Regulation and Controlling Regulatory Costs*

This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 *requires* agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

*D. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*E. Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)*

This rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

*F. E.O. 12630, Takings*

This rule does not have takings implications.

*G. E.O. 13132, Federalism*

This rule does not have federalism implications. The rule does 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.

*H. E.O. 12988, Civil Justice Reform*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*I. E.O. 13175, Consultation With Indian Tribes*

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

*J. Paperwork Reduction Act*

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

**List of Subjects in 5 CFR Part 185**

Program Fraud Civil Remedies, Claims, Penalties, Basis for Civil Penalties and Assessments.

Office of Personnel Management.

**Stephen Hickman,**

*Regulatory Affairs.*

For the reasons set forth in the preamble, amend part 185 of title 5 of the Code of Federal Regulations as follows:

## PART 185—PROGRAM FRAUD CIVIL REMEDIES: CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 185 continues to read:

**Authority:** 28 U.S.C. 2461 note.

**§ 185.103 [Amended]**

■ 2. Section 185.103 is amended in paragraphs (a) introductory text and (f)(2) by revising ''$11,181'' to read as ''$11,463''.

[FR Doc. 2019–21132 Filed 9–30–19; 8:45 am]

BILLING CODE 6325–48–P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary of Agriculture

### 7 CFR Part 1

### Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary

**AGENCY:** Office of the Secretary of Agriculture, USDA.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA or Department) is amending the regulations on the rules of practice and procedure governing formal rulemaking proceedings instituted by the Secretary. This final rule amends the definition of judge so that the term is consistently applied to all USDA formal rulemaking proceedings.

**DATES:** This final rule is effective October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rupa Chilukuri, Trial Attorney, Office of the General Counsel, telephone: 202–720–4982, email: *Rupa.Chilukuri@usda.gov.*

**SUPPLEMENTARY INFORMATION:** USDA is issuing this final rule to amend the definition of judge in the rules of practice and procedure governing formal rulemaking proceedings instituted by the Secretary. The current definition of judge in the rules of practice at 7 CFR 1.802 only includes administrative law judges. To provide the agency with more flexibility in overseeing formal rulemaking proceedings, and to better allocate resources within the Department, we are expanding the definition of judge to be consistent with how that term is defined in the Department's other rules of practice and procedure applicable to formal rulemaking proceedings (*i.e.,* 7 CFR part 900 (General Regulations) and 7 CFR part 1200 (Rules of Practice and Procedure Governing Proceedings Under Research, Promotion, and Information Programs)). Judge will now be defined as any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

**5 U.S.C. 553, 601, and 804**

This final rule modifies a definition in agency rules of practice and procedure. Under the Administrative Procedure Act, prior notice and opportunity for comment are not required for the promulgation of agency rules of practice and procedure. 5 U.S.C. 553(b)(3)(A). Only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the **Federal Register**.

Furthermore, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. In addition, because prior notice and opportunity for comment are not required to be provided for this final rule, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

**Executive Orders 12866 and 13563**

This rule does not meet the definition of a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. Because this rule is not a significant regulatory action, it has not been reviewed by the Office of Management and Budget.

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).

**Executive Order 13771**

Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements of Executive Order 13771. *See* OMB's Memorandum on ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings that must be exhausted before parties may file suit in court challenging this rule.

**Executive Order 13132**

This rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The review reveals that this rule does not contain policies with federalism implications sufficient to warrant federalism consultation under Executive Order 13132.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on tribal governments and would not have significant tribal implications.

**Paperwork Reduction Act**

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

**List of Subjects in 7 CFR Part 1**

Administrative practice and procedure.

For the reasons set forth in the preamble, 7 CFR part 1 is amended as follows:

## PART 1—ADMINISTRATIVE REGULATIONS

### Subpart P—Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary

■ 1. Add an authority citation for subpart P of part 1 to read as follows:

**Authority:** 5 U.S.C. 301.

■ 2. Section 1.802 is amended by revising the definition of ''Judge'' to read as follows:

**§ 1.802 Definitions.**

* * * * *

*Judge* means any administrative law Judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

* * * * *

**Stephen Alexander Vaden,**

*General Counsel, Office of the General Counsel.*

[FR Doc. 2019–20585 Filed 9–30–19; 8:45 am]

BILLING CODE 3410–90–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

**[Document Number AMS–SC–18–0055, SC–18–330]**

### U.S. Standards for Grades of Apples

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is amending the U.S. Standards for Grades of Apples by removing smooth net-like russeting as a grade-determining factor in the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades for Fuji apples. In addition, AMS is removing obsolete references to the location where color standards may be examined and purchased. The changes modernize the standards and meet consumer demand by providing greater marketing flexibility.

**DATES:** Effective October 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** David G. Horner, Agricultural Marketing Specialist, USDA, AMS, Specialty Crops Program, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg VA, 22406; phone (540) 361–1120; fax (540) 361–1199; or, email *Dave.Horner@usda.gov.* Copies of the revised U.S. Standards for Apples are available at *http://www.regulations.gov* or on the AMS website at *https://www.ams.usda.gov/grades-standards/fruits.*

**SUPPLEMENTARY INFORMATION:** The changes exempt Fuji apples from smooth net-like russeting as a grade-determining factor. These revisions also affect the grade requirements under the Export Apple Act.

**Executive Orders 12866, 13771, and 13563**

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

**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).

**Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments or significant Tribal implications.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

**Background**

The current U.S. standards provide for apples to be sorted into various grades, including but not limited to U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1. Each of the grades describes the qualities required for apples to meet the standards and those that are not to be scored against certain varieties of apples when determining grade. AMS proposed amending the U.S. standards for apples so that smooth net-like russeting of Fuji apples would not be scored in any grade (*See* 84 FR 19743). Smooth net-like russeting is a cosmetic defect that affects the skin of the apple but not the internal quality of the fruit. Smooth net-like russeting, which is called flecking by the Pacific Northwest apple industry, is prevalent in the Fuji variety. U.S. apple standards restricted apples from exhibiting an aggregate area of smooth net-like russeting greater than 10 percent for U.S. Extra Fancy, 15 percent for U.S. Fancy, and 25 percent for U.S. No. 1 from meeting the grade requirements. The Export Apple Act regulations (7 CFR part 33) require that apples grade at least U.S. No. 1 or U.S. No. 1 Early (except apples for export to Pacific ports of Russia must grade at least U.S. Utility or U.S. No. 1 Hail for hail damaged apples, as specified in the U.S. Standards for Grades of Apples). Fuji apples that display smooth net-like russeting greater than the percentages allowed are therefore excluded from the export market due to current U.S. grade standards.

The Washington State Grade Standards for Apples (16 W.A.C. 403) do not consider smooth net-like russeting to be a defect for Fuji apples if the russeting does not rise above the surface of the skin and the skin is not rough to the touch. Apples grown in Washington account for nearly 75 percent of domestic production and more than 90 percent of U.S. export apples. Revising the U.S. apple standards to exclude scoring of smooth net-like russeting on Fuji apples as a quality defect, in alignment with the Washington State standards, will promote consistency across the apple market and remove barriers to the export market for growers of the Fuji variety.

In December 2016, the Northwest Horticultural Council (NHC) petitioned AMS to remove the requirement for scoring smooth net-like russeting from the U.S. Standards for Grades of Apples for the Fuji variety. In response, AMS asked the NHC to provide justification and evidence of industry support, which they did in a memorandum submitted in April 2018. The NHC provided research showing that Fuji apples have a propensity for smooth net-like russeting and that the feature does not negatively affect the internal quality of the fruit. In addition, the NHC stated that revising the U.S. apple standards would partially harmonize them with the Washington State apple standards, and help prevent sound Fuji apples from being rejected in domestic and international markets. The NHC petition was supported by the Washington Apple Commission, Idaho Apple Commission, California Apple Commission, and many other apple organizations. AMS conducted research on the proposal by meeting with Washington State and industry personnel in November 2018. Based on available data, AMS concluded that exempting Fuji apples from scoring smooth net-like russeting as a quality defect would provide the industry with greater flexibility, and align the U.S. standards with current state and industry practices.

**Comments**

On May 6, 2019, AMS published a proposed rule in the **Federal Register** (84 FR 19743) soliciting comments on removing smooth net-like russeting as a grade-determining factor from the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades for Fuji apples. In addition, AMS proposed removing obsolete references to the location where color standards may be examined and purchased. The comment period closed on July 5, 2019. Three comments were received; all supported the proposed revisions.

One commenter was an association representing 7,500 apple growers throughout America as well as more than 400 individual firms involved in the apple business. They ''strongly support[ed]'' the revisions as they will remove an unnecessary obstacle to U.S.-grown Fuji apples accessing the global marketplace. Another commenter representing growers, shippers, and packers in the Pacific Northwest ''fully supported'' the proposed revisions and ''encourage[d] its swift adoption.'' The third commenter was anonymous and stated that the revisions were ''ideal'' since the changes would prevent sound apples from going to waste.

Based on the information gathered, AMS is making the following revisions to the U.S. Standards for Grades of Apples:

- *Section 51.300 U.S. Extra Fancy:* Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect.
- *Section 51.301 U.S. Fancy:* Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect.
- *Section 51.302 U.S. No. 1:* Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect. The revision of the U.S. No. 1 grade also will affect the U.S. No. 1 Hail (§ 51.302(a)) grade and the permitted combination grades (§ 51.304).
- *Section 51.305 Color Requirements:* Revised to remove obsolete references to the location where color standards may be examined and purchased.

**Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impacts of the revision to the U.S. Standards for Grades of Apples (7 CFR 51.300–51.322). The purpose of the RFA is to structure regulatory actions such that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this regulatory flexibility analysis.

The revision will result in a minor change to the current U.S. standards to allow smooth net-like russeting of the Fuji variety of apple. There will be little

or no additional cost to implement this revision.

According to the Small Business Administration (SBA) (13 CFR 121.601), the definition of a small apple producer is one whose annual sales are less than $750,000. Based on this definition, data from the 2012 Agricultural Census show that at least 94 percent of farm operations that produce apples are considered small. These small growers will not be disproportionately affected by the rule as all changes to the standard will be applied uniformly on all market participants.

The proposal for the change to the U.S. Standards for Grades of Apples was submitted by the NHC, which represents apple growers, packers, and shippers in Washington, Oregon, and Idaho who account for 75 percent of domestic fresh apple production. This proposal was reviewed by the U.S. Apple Association and the U.S. Apple Export Council. The addition of smooth net-like russeting to the list of features that are not scorable against Fuji apples in the U.S. Standards for Grades of Apples will promote consistency in apple grading, increase U.S. Fuji apple access into export markets, and provide for greater price stability for the Fuji variety of apples.

**List of Subjects in 7 CFR Part 51**

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

## PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621—1627.

■ 2. Revise § 51.300 to read as follows:

### § 51.300 U.S. Extra Fancy.

''U.S. Extra Fancy'' consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, free from decay, internal browning, internal breakdown, soft scald, scab, freezing injury, visible watercore, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible watercore after January 31st of the year following the year of production except for the Fuji variety of apples. Invisible watercore and smooth net-like russeting shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table 1 of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

■ 3. Revise § 51.301 to read as follows:

### § 51.301 U.S. Fancy.

''U.S. Fancy'' consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible watercore, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible watercore after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible watercore and smooth net-like russeting shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table 1 of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

■ 4. Amend § 51.302 by revising the introductory text to read as follows:

### § 51.302 U.S. No. 1.

''U.S. No. 1'' consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in table 1 of § 51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of ''damage by russeting,'' except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: *Provided,* That, in the case of the Yellow Newtown or similar varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent; and that smooth net-like russeting shall not be scored against the Fuji variety under any circumstances. Each apple of this grade has the amount of color specified in § 51.305 for the variety. Invisible watercore shall not be scored in this grade. (See §§ 51.305 and 51.306.)

* * * * *

■ 5. In § 51.305, remove the two undesignated introductory paragraphs and add paragraphs (a) and (b) in their place to read as follows:

### § 51.305 Color requirements.

(a) In addition to the requirements specified for the grades set forth in §§ 51.300 through 51.304, apples of these grades shall have the percentage of color specified for the variety in table 1 of this section. All apple varieties other than those appearing in table 1 of this section shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided,* That an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color.

(b) Color standards USDA Visual Aid APL–CC–1 (Plates a–e) consists of a folder containing the color requirements for apples set forth in paragraph (a) of this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York. The color standards are available for purchase at *http://www.ams.usda.gov.*

* * * * *

Dated: September 18, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–20570 Filed 9–30–19; 8:45 am]

**BILLING CODE 3410–02–P**

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 701

**RIN 3133–AE84**

## Payday Alternative Loans

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is issuing a final rule (referred to as the PALs II rule) to allow federal credit unions (FCUs) to offer additional payday alternative loans (PALs) to their members. The final rule does not replace the NCUA's current PALs rule (referred to as the PALs I rule). Rather, the PALs II rule grants FCUs additional flexibility to offer their members meaningful alternatives to traditional payday loans while maintaining many of the key structural safeguards of the PALs I rule.

**DATES:** The final rule is effective on December 2, 2019.

**FOR FURTHER INFORMATION CONTACT:** Matthew Biliouris, Director, Office of Consumer Financial Protection; Joseph Goldberg, Director, Division of Consumer Compliance Policy and Outreach, Office of Consumer Financial Protection; or Marvin Shaw, Staff Attorney, Division of Regulations and Legislation, Office of General Counsel; 1775 Duke Street, Alexandria, VA 22314–6113 or telephone: (703) 518–1140 (Messrs. Biliouris and Goldberg), or (703) 518–6540 (Mr. Shaw).

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Summary of Comments
III. Summary of the Final Rule
IV. Statement of Legal Authority
V. Section-by-Section Analysis
VI. Regulatory Procedures

## I. Background

Federal credit unions (FCUs) provide individuals of modest means access to affordable credit for productive and provident purposes.[1] This core credit union mission puts FCUs in natural competition with short-term, small-dollar lenders that offer payday, vehicle title, and other high-cost installment loans to borrowers of modest means.[2]

A ''payday loan'' generally refers to a short-term, small-dollar loan repayable in one or more installments with repayment secured by a pre- or post-dated check or a preauthorized electronic fund transfer (EFT) from the borrower's checking account.[3] A payday loan usually matures in 14 days, around the borrower's next payday, at which time the borrower is often required to repay the loan in a single balloon payment. The borrower typically does not pay interest on a payday loan. Rather, payday lenders charge high ''application'' fees relative to the amount borrowed, which typically range between $15 and $35 per 100 borrowed.[4] This pricing structure produces a triple-digit annual percentage rate (APR).[5]

Despite marketing payday loans as a temporary lifeline to borrowers, most payday lenders refinance or ''rollover'' the borrower's initial payday loan charging additional fees without a significant economic benefit to the borrower. In fact, the Center for Responsible Lending estimates that 76 percent of payday loans are rollovers.[6] Borrowers most often rollover a payday loan because the borrower does not have the ability to repay the initial loan upon maturity or will have limited funds to meet other obligations.[7] This pattern of repeated borrowings creates a ''cycle of debt'' that can increase the borrower's risk of becoming unbanked, filing for bankruptcy, or experiencing severe financial hardship.[8]

### *2010 Payday Alternative Loan Rulemaking (PALs I Rule)*

In 2010, the Board amended the NCUA's general lending rule, § 701.21, to provide a regulatory framework for FCUs to make viable alternatives to payday loans, the PALs I rule.[9] The PALs I rule, § 701.21(c)(7)(iii), permits an FCU to offer to its members a PAL loan, a form of closed-end consumer credit, at a higher APR than other credit union loans as long as the PAL has certain structural features, developed by the Board, to protect borrowers from predatory payday lending practices that can trap borrowers in repeated borrowing cycles.

For example, the PALs I rule eliminates the potential for ''loan churning,'' the practice of inducing a borrower to repay an existing loan with another loan without significant economic benefit to the borrower, by prohibiting an FCU from rolling one PALs I loan into another PALs I loan.[10] As the Board previously explained, ''these provisions of the [PALs I rule] will work to curtail a member's repetitive use and reliance on this type of product, which often compounds the member's already unstable financial condition . . . The Board recognizes that continuously 'rolling-over' a loan can subject a borrower to additional fees and repayment amounts that are substantially more than the initial amount borrowed.'' [11] However, to avoid the possibility of a default in cases where the borrower cannot repay the initial PAL loan, an FCU may extend the maturity of an existing PALs I loan to the maximum term limit permissible under the regulation as long as the borrower does not pay any additional fees or receive additional credit. An FCU may also refinance a traditional payday loan into a PALs I loan.[12]

The PALs I rule also eliminates the underlying borrower payment shock from a single balloon payment, which often forces a borrower to rollover a payday loan, by requiring that each PAL loan fully amortize over the life of the loan.[13] As the Board previously stated in the preamble to the final PALs I rule, ''balloon payments often create additional difficulty for borrowers trying to repay their loans, and requiring FCUs to fully amortize the loans will allow borrowers to make manageable payments over the term of the loan, rather than trying to make one large payment.'' [14] Accordingly, an FCU must structure a PALs I loan so that a member repays principal and interest in

[1] *See* Credit Union Membership Access Act, Public Law 105–219, section 2, 112 Stat. 913 (Aug. 7, 1998) (*codified as* 12 U.S.C. 1751 note).

[2] Roy F. Bergengren, *Coöperative Credit,* 191 The Annals of the American Academy of Political and Social Science 144–148 (1937).

[3] Robert W. Snarr, Jr., Fed. Reserve Bank of Phila., *No Cash 'til Payday: The Payday Lending Industry,* Compliance Corner (1st Quarter 2002) *available at www.philadelphiafed.org/bank-resources/publications/compliance-corner/2002/first-quarter/q1cc1_02.cfm.*

[4] *See* National Consumer Law Center, *Consumer Credit Regulation* 403–6 (1st ed. 2012).

[5] The ''annual percentage rate'' is a ''measure of the cost of credit, expressed as a yearly rate.'' 12 CFR 1026.14(a).

[6] Uriah King & Leslie Parrish, Center for Responsible Lending, *Phantom Demand: Short-Term Due Date Generates 76% of Total Volume* 15 (July 2009) *available at www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-genderates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html.*

[7] *Id.*

[8] *Id.*

[9] Short-Term, Small Amount Loans, 75 FR 58285 (Sept. 24, 2010).

[10] 12 CFR 701.21(c)(7)(iii)(A)(*4*).

[11] Short-Term, Small Amount Loans, 75 FR 24497, 24499 (May 5, 2010).

[12] Short-Term, Small Amount Loans, 75 FR 58285, 58286 (Sept. 24, 2010).

[13] 12 CFR 701.21(c)(7)(iii)(A)(*5*).

[14] Short-Term, Small Amount Loans, 75 FR 58285, 58287 (Sept. 24, 2010).

approximately equal installments on a periodic basis until loan maturity.[15] While the Board does not prescribe a specific payment schedule—*e.g.,* bi-weekly or monthly—the Board expects an FCU to structure the repayment of each PALs I loan to ensure that the member has a reasonable ability to repay the loan without the need for another PALs I loan or traditional payday loan. Accordingly, an FCU may not require that a borrower repay a PAL loan using a single balloon payment.

Moreover, the PALs I rule removes the economic incentive for an FCU to encourage a borrower to take out multiple PALs I loans by limiting the permissible fees that an FCU may charge that borrower to a reasonable application fee.[16] The non-credit union payday lending business model depends on repeated borrowings from a single borrower of small dollar amounts with high fees and associated charges. A traditional payday lender has every incentive to make multiple payday loans to that borrower to maximize the profitability of that relationship at the expense of the borrower. By limiting the scope of permissible fees, the PALs I rule realigns economic incentives to encourage an FCU to provide a PALs I loan as a pathway towards mainstream financial products and services rather than as a separate profit center for the credit union.

The Board recognizes that the PALs I rule contains recommended best practices that, when exercised in conjunction with a PALs I loan, help put credit union members on the pathway to mainstream financial products and services. This includes reporting to credit reporting agencies and providing financial education. As of December 2018, almost eighty-five percent of FCUs reported sharing PALs I loan information with credit reporting agencies and nearly forty-five percent reported providing financial education services to PALs I loan borrowers. The Board commends FCUs for undertaking these additional steps to assist their members.

*2012 Payday Alternative Loan Advanced Notice of Proposed Rulemaking (PALs I ANPR)*

As part of the 2010 rule making process, the Board indicated that it would review PALs I loan data collected on FCU call reports after one year to reevaluate the requirements of the PALs I rule.[17] As of September 2011, 372 FCUs offered PALs I loans with an aggregate balance of $13.6 million or 36,768 outstanding loans. Six months later, as of March 31, 2012, approximately 386 FCUs reported offering PALs I loans with an aggregate balance of $13.5 million on 38,749 outstanding loans. While the Board acknowledged at that time that some FCUs might make an independent business decision not to offer PALs I loans, it nevertheless sought to increase the number of FCUs making PALs I loans in a meaningful way and to ensure that all FCUs that chose to offer PALs I loans were able to recover the costs associated with making these types of loans.

For that reason, the Board issued an advanced notice of proposed rulemaking (PALs I ANPR) seeking comments on specific aspects of the PALs I rule at its September 2012 meeting.[18] These questions included, but were not limited to, asking whether the Board should allow an FCU to charge a higher application fee, whether the Board should increase the permissible PALs I loan interest rate, and whether the Board should expand the maximum permissible loan amount. The Board also asked commenters to provide information on any small dollar, short-term loans offered outside of the PALs I rule.

The Board received comments from trade organizations, state credit union leagues, consumer advocacy groups, lending networks, private citizens, and FCUs suggesting changes to at least one aspect of the PALs I rule. However, these commenters offered no consensus regarding which aspects of the PALs I rule the Board should modify. Consequently, the Board chose not to undertake any changes to the PALs I rule at that time.

*2018 Payday Alternative Loan II Notice of Proposed Rulemaking (PALs II NPRM)*

In May 2018, the Board approved a notice of proposed rulemaking to amend the NCUA's general lending rule to allow FCUs to make an additional viable alternative to predatory payday loans (PALs II NPRM).[19] As of December 2017, 518 FCUs reported offering PALs I loans with 190,723 outstanding loans and an aggregate balance of $132.4 million.[20] These figures represent a significant increase in loan volume from 2012 when the Board issued the PALs I ANPR. However, the number of FCUs offering these products has only grown modestly.

The purpose of the PALs II NPRM was to provide FCUs with additional flexibility to offer PALs loans to their members. The PALs II NPRM did not propose to replace the PALs I rule. Rather, it allowed an FCU to offer a more flexible PALs loan while retaining key structural features of the PALs I rule designed to protect consumers from predatory payday lending practices, including restrictions on permissible fees, rollovers, and amortization. The Board intended the PALs I rule and proposed PALs II rule to create distinct products (referred to in this document, respectively, as PALs I and PALs II loans) that must satisfy similar regulatory requirements tailored to the unique aspects of each product.

Features Incorporated From the PALs I Rule

The PALs II NPRM proposed to incorporate many of the structural features of the PALs I rule designed to protect borrowers from predatory payday lending practices. Those features included a limitation on rollovers, a requirement that each PALs II loan must fully amortize over the life of the loan, and a limitation on the permissible fees that an FCU may charge a borrower related to a PALs II loan. An FCU would also have had to structure each loan as closed-end consumer credit. As discussed in more detail below, the PALs II NPRM modified other features of the PALs I rule for PALs II loans. The purpose of these modifications was to encourage additional FCUs to offer PALs II loans as an alternative to predatory payday loans and to meet the needs of certain payday loan borrowers that may not be met by PALs I loans.

Loan Amount

The PALs II NPRM proposed to allow an FCU to make a PALs II loan for a loan amount up to $2,000 without any minimum loan amount. The PALs I rule currently limits PALs I loan amounts to a minimum of $200 and a maximum of $1,000.[21] The PALs II NPRM noted that allowing a higher loan amount would give an FCU the opportunity to meet increased demand for higher loan amounts from payday loan borrowers and provide some borrowers with an opportunity to consolidate multiple payday loans into one PALs II loan. The Board was particularly interested in allowing a sufficient loan amount to encourage borrowers to consolidate

[15] *Id.*

[16] 12 CFR 701.21(c)(7)(iii)(A)(*3*).

[17] 75 FR 58285, 58288 (Sept. 24, 2010).

[18] Payday-Alternative Loans, 77 FR 59346 (Sept. 27, 2012).

[19] Payday Alternative Loans, 83 FR 25583 (June 4, 2018).

[20] As of December 2018, 606 FCUs reported offering PALs I loans with 211,589 outstanding loans and an aggregate balance of $145.2 million.

[21] *See* 12 CFR 701.21(c)(7)(iii)(A)(*1*).

payday loans into PALs II loans to create a pathway to mainstream financial products and services offered by credit unions.

Loan Term

Consistent with the proposal to increase the permissible loan amount to $2,000, the PALs II NPRM proposed increasing the maximum loan term for a PALs II loan to 12 months. The PALs I rule currently limits PALs I loan maturities to a maximum term of 6 months.[22] The increased loan term would allow a borrower sufficient time to repay their loans, thereby avoiding the types of borrower payment shock common in the payday lending industry that force borrowers to repeatedly rollover payday loans. The PALs II NPRM noted that an FCU would be free to choose an appropriate loan term, provided the loan fully amortized, and encouraged FCUs to select loan terms that were in the best financial interests of PALs II borrowers.

Membership Requirement

The PALs II NPRM also proposed to allow an FCU to offer a PALs II loan to any member regardless of the length of membership. The PALs I rule currently requires a borrower to be a member of the credit union for at least one month before receiving a PALs I loan.[23] The PALs II NPRM eliminated the membership time requirement to allow an FCU to make a PALs II loan to any member borrower that needed access to funds immediately and would otherwise turn to a payday lender to meet that need. Nevertheless, the PALs II NPRM still encouraged FCUs to consider a minimum membership requirement as a matter of prudent underwriting.

Number of Loans

Finally, the PALs II NPRM proposed to remove the restriction on the number of PALs II loans that an FCU may make to a single borrower in a rolling 6-month period. The PALs I rule currently prohibits an FCU from making more than three PALs loans in a rolling 6-month period to a single borrower.[24] An FCU also may not make more than one PALs I loan to a borrower at a time. The Board suggested removing the rolling 6-month requirement for PALs II loans to provide FCU's with maximum flexibility to meet borrower demand. However, the PALs II NPRM proposed to retain the requirement from the PALs I rule that an FCU can only make one loan at a time to any one borrower. Accordingly, the PALs II NPRM did not allow an FCU to provide more than one PALs product, whether a PALs I or PALs II loan, to a single borrower at a given time.

Request for Additional Comments

In addition to the proposed PALs II framework, the PALs II NPRM asked general questions about PAL loans, including whether the Board should prohibit an FCU from charging overdraft fees for any PAL loan payments drawn against a member's account. The PALs II NPRM also asked questions, in the nature of an ANPR, about whether the Board should create an additional kind of PAL loan, referred to as PALs III, which would be even more flexible than what the Board proposed in the PALs II NPRM. Before proposing a PALs III loan, the PALs II NPRM sought to gauge industry demand for such a product, as well as solicit comment on what features and loan structures should be included in a PALs III loan.

## II. Summary of Comments on the PALs II NPRM

The Board received 54 comments on the PALs II NPRM from 5 credit union trade organizations, 17 state credit union leagues, 5 consumer advocacy groups, 2 state and local governments, 2 charitable organizations, 2 academics, 2 attorneys, 3 credit union service organizations, 14 credit unions, and 2 individuals. A majority of the commenters supported the Board's proposed PALs II framework but sought additional changes to provide FCUs with more regulatory flexibility. These commenters focused on ways to increase the profitability of PALs loans such as by allowing FCUs to make larger loans with longer maturities, or charge higher fees and interest rates.

Some commenters strongly opposed the proposed PALs II framework. These commenters argued that the proposed framework could blur the distinction between PALs and predatory payday loans, which could lead to greater consumer harm. One commenter in particular argued that the Board has not fully explained why the proposed PALs II framework will encourage more FCUs to offer PALs loans to their members. Instead, these commenters urged the Board to focus on methods to curtail predatory lending by credit unions outside of the PALs I rule and to address potential abuses regarding overdraft fees.

Most commenters offered at least some suggestions on the creation of a PALs III loan. An overwhelming majority of these comments related to increasing the allowable interest rate for PALs III loans and giving FCUs greater flexibility to charge a higher application fee. The commenters that were opposed to the proposed PALs II framework similarly were opposed to the creation of a PALs III loan for the reasons noted above.

## III. Summary of Final Rule

With the exception of reconsidering the proposed removal of the limit on the number of PAL loans in a rolling 6-month period, the Board is adopting the PALs II framework largely as proposed in the PALs II NPRM. The requirements for PALs II loans will be set out in a new paragraph of the NCUA's general lending rule, § 701.21(c)(7)(iv). The final rule allows an FCU to offer a PALs II loan to a member for any amount up to a maximum loan amount of $2,000. The PALs II loan must carry a loan term of at least 1 month with a maximum loan maturity of 12 months. The FCU may make such a loan immediately upon the borrower establishing membership in the credit union. However, an FCU may only offer one type of PALs loan to a member at any given time. All other requirements of the PALs I rule will continue to apply to PALs II loans including the prohibition against rollovers, the limitation on the number of PALs loans that an FCU can make to a single borrower in a given period, and the requirement that each PALs II loan fully amortize over the life of the loan.

Additionally, the final rule prohibits an FCU from charging any overdraft or non-sufficient funds (NSF) fees in connection with any PALs II loan payment drawn against a borrower's account. This includes overdraft fees or NSF fees that an FCU could assess against the borrower for paying items presented for payment after the PALs II loan payment creates a negative balance in the borrower's account. As discussed below, while the Board believes that reasonable and proportional fees assessed in connection with an overdraft loan are appropriate in most cases to compensate an FCU for providing an important source of temporary liquidity to borrowers, the Board has serious fairness concerns regarding this practice in connection with PAL loans given the unique characteristics of payday loan borrowers and the Board's stated goal of putting individuals on a path to mainstream financial products and services.

Lastly, the final rule does not take any immediate action with regard to PALs III loans. The Board has taken the comments regarding a PALs III loan under advisement and will determine whether future action is necessary.

[22] *See* 12 CFR 701.21(c)(7)(iii)(A)(*2*).

[23] *See* 12 CFR 701.21(c)(7)(iii)(A)(*6*).

[24] *See* 12 CFR 701.21(c)(7)(iii)(A)(*3*).

## IV. Statement of Legal Authority

The Board is issuing this final rule pursuant to its plenary regulatory authority to administer the Federal Credit Union Act (FCU Act) [25] and its specific authority to adopt rules and regulations that it deems necessary or appropriate to ensure the safety and soundness of the credit union system and the National Credit Union Share Insurance Fund (NCUSIF).[26] Given the historic mission of credit unions to serve individuals of modest means, the importance of providing these individuals with a realistic pathway towards mainstream financial products and services, and the high fixed costs associated with offering viable alternatives to payday loans, this final rule is an appropriate exercise of the Board's regulatory authority.

## V. Section-by-Section Analysis

Because the PALs II NPRM proposed to apply many of the requirements of the PALs I rule to PALs II loans, the Board received numerous comments regarding the PALs I rule. The Board addresses those comments below in a section-by-section analysis of the PALs I rule, § 701.21(c)(7)(iii). With the exception of one clarification regarding the aggregate concentration limit set out in § 701.21(c)(7)(iii)(A)(*8*), the Board is not adopting any changes to the PALs I rule. However, in response to questions raised by several commenters, the Board does provide additional guidance below regarding application fees and underwriting criteria. Specific comments related to the PALs II NPRM are discussed in the section-by-section analysis of § 701.21(c)(7)(iv), which contains the new PALs II rule.

### *Section 701.21(c)(7)(iii)—Payday Alternative Loans (PALs I)*

### *Section 701.21(c)(7)(iii)(A)—Minimum Requirements for PALs I*

Section 701.21(c)(7)(iii)(A) permits an FCU to charge an interest rate that is 1000 basis points above the usury ceiling established by the Board under the NCUA's general lending rule. The current usury ceiling is 18 percent inclusive of all finance charges.[27] For PALs I loans, this means that the maximum interest rate that an FCU may charge for a PAL is currently 28 percent inclusive of all finance charges.

Many commenters requested that the Board increase the maximum interest rate that an FCU may charge for a PALs loan to 36 percent. These commenters noted that a 36 percent maximum interest rate would mirror the rate used by the Consumer Financial Protection Bureau (CFPB or Bureau) to determine whether certain high-cost loans are ''covered loans'' within the meaning of the Bureau's Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (payday lending rule) [28] and maximum interest rate allowed for active duty service members under the Military Lending Act,[29] providing a measure of regulatory uniformity for FCUs offering PALs loans. These commenters also argued that increasing the maximum interest rate to 36 percent would allow FCUs to compete more effectively with insured depository institutions and payday lenders for market share in this market.

In contrast, two commenters argued that a 28 percent interest rate is sufficient for FCUs. These commenters stated that on higher dollar loans with longer maturities, the current maximum interest rate of 28 percent is enough to allow an FCU to make PALs loans profitably. Another commenter noted that many credit unions are able to make PALs loans profitably at 18 percent, which it believed is evidence that the higher maximum interest rate is unnecessary.

Since the Board originally adopted the PALs I rule, it has observed substantial ongoing changes in the payday lending marketplace. Given all of these developments, the Board does not believe it is appropriate to adjust the maximum interest rate for PALs loans, whether a PALs I loan or PALs II loan, without further study. Furthermore, the Board notes that both the Bureau's payday lending rule and the Military Lending Act use an all-inclusive interest rate limit that may or may not include some of the fees, such as an application fee, that are permissible for PALs loans. Accordingly, the Board will continue to consider the commenters' suggestions and may revisit the maximum interest rate allowed for PALs loans if appropriate.

### *Section 701.21(c)(7)(iii)(A)(3)*

Section 701.21(c)(7)(iii)(A)(*3*) limits the number of PALs I loans that an FCU can make to three in a rolling 6-month period to any one borrower. An FCU also may not make more than one PALs I loan at a time to a borrower. To account for the adoption of the PALs II rule, the final rule amends this section to clarify that an FCU may not offer more than one PALs loan, whether a PALs I or PALs II loan, to a borrower at a time.

Some commenters argued that the limitation on the number of PALs loans that a borrower may receive at a given time would force borrowers to take out a payday loan if the borrower needs additional funds. However, the Board believes that this limitation places a meaningful restraint on the ability of a borrower to take out multiple PALs loans at an FCU, which could jeopardize the borrower's ability to repay each of these loans. While a pattern of repeated or multiple borrowings may be common in the payday lending industry, the Board believes that allowing FCUs to engage in such a practice would defeat one of the purposes of PALs loans, which is to provide borrowers with a pathway towards mainstream financial products and services offered by credit unions.

### *Section 701.21(c)(7)(iii)(A)(7)*

Section 701.21(c)(7)(iii)(A)(*7*) permits an FCU to charge a reasonable application fee, not to exceed $20, to all members applying for a PALs I loan. The Board interprets the term ''application fee,'' as used in the PALs I rule, consistently with that of the CFPB's Regulation Z. Accordingly, in order to qualify as an ''application fee'' under the PALs I rule, an FCU must use the charge to recover actual costs associated with processing an individual application for credit such as credit reports, credit investigations, and appraisals.[30] An application fee that exceeds the actual cost of processing a borrower's application is a finance charge under Regulation Z that must be included in the APR and measured against the usury ceiling in the NCUA's rules.[31]

In response to the PALs II NPRM, several commenters argued that the current application fee limit of $20 is too low to allow an FCU to recover the actual costs of processing applications. The majority of these commenters recommended that the Board set the application fee limit between $40 and $50 to create an incentive for more FCUs to offer PALs loans to their members. Because of the limited underwriting involved with a PALs loan, the Board does not believe that an

[25] 12 U.S.C. 1766(a).

[26] 12 U.S.C. 1789(a)(11).

[27] Historically, the Board has interpreted the term ''finance charge'' in the NCUA's general lending rule consistently with that term in the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and the Consumer Financial Protection Bureau's implementing regulation, Regulation Z, 12 CFR part 1026. *See e.g.* Payday Lending, Letter to Federal Credit Unions 09–FCU–05 (July 2009) (''NCUA's long standing policy has been to look to the definition of 'finance charge' in Regulation Z'').

[28] 12 CFR 1041.3(b)(3)(i).

[29] 10 U.S.C. 987; 32 CFR part 232.

[30] 12 CFR 1026.4(c)(1).

[31] *See* 12 CFR part 1026, Supp. I, comment 4(c)(1)–1.

application fee limit between $40 and $50 is appropriate. While one commenter provided a revenue model to help illustrate the potential cost of making a PALs loan, a majority of the commenters have not provided sufficient data to support their conclusion that the $20 application fee limit is too low to allow any FCU to recover the actual costs of processing applications. Furthermore, the Board believes that an increased application fee limit creates unnecessary potential for abuse by an FCU that may use a higher application fee as concealed interest to compensate the credit union for the risk of loss associated with making a PALs loan.

Other commenters asked the Board to clarify whether an application fee may reflect staff and technology costs, investing in loan processing automation, third-party service provider costs, and advertising. As noted above, the Board interprets the term ''application fee'' in the PALs I rule consistently with Regulation Z. An application fee must reflect the actual and direct costs associated with processing an individual application. While certain third-party service provider costs may be included in the application fee, especially if the FCU offers a PALs loan through a third-party vendor and passes any costs associated with using that vendor onto the member borrower, the Board does not believe that other costs, such as investing in loan processing automation or advertising costs, are actual and direct costs associated with processing a borrower's application. Rather, these costs are general business expenses incurred as part of credit union operations and do not relate to costs specifically incurred processing a borrower's PALs loan application.

One commenter stated that the Board should only permit one application fee per year. This commenter argued that the limited underwriting of a PALs loan does not justify allowing an FCU to charge an application fee for each PALs loan. Another commenter similarly requested that the Board adopt some limit on the number of application fees that an FCU may charge for PALs loans in a given year. The Board appreciates the commenters concerns about the burden excessive fees place on borrowers. This is particularly relevant in this area. However, the Board must balance the need to provide a safe product for borrowers with the need to create sufficient incentives to encourage FCUs to make PALs loans. The Board believes that its current approach of allowing FCUs to charge a reasonable application fee, consistent with Regulation Z, which does not exceed $20, provides the appropriate balance between these two objectives.

Several commenters also suggested that the Board permit an FCU to charge a monthly service fee for PALs loans. As noted above, the Board interprets the term ''finance charge,'' as used in the FCU Act, consistently with Regulation Z. A monthly service fee is a finance charge under Regulation Z.[32] Consequently, the monthly service fee would be included in the APR and measured against the usury ceiling in the NCUA's rules. Therefore, while the PALs I rule does not prohibit an FCU from charging a monthly service fee, the Board believes that such a fee will be of little practical value to an FCU because any monthly service fee income likely would reduce the amount of interest income an FCU could receive from the borrower or would push the APR over the applicable usury ceiling.

*Section 701.21(c)(7)(iii)(A)(8)*

Section 701.21(c)(7)(iii)(A)(*8*) requires an FCU to include a limit on the aggregate dollar amount of PALs I loans in its written lending policies. Under no circumstances may the total amount of PALs I loans be greater than 20 percent of the FCU's net worth. This provision also requires an FCU to adopt appropriate underwriting guidelines to minimize the risks related to PALs I loans. A set of best practices for PALs I loan underwriting is included as guidance in § 701.21(c)(7)(iii)(B)(*2*).

The final rule amends § 701.21(c)(7)(iii)(A)(*8*) to clarify that the 20 percent aggregate limit applies to both PALs I and PALs II loans. The Board adopted this limit in the PALs I rule as a precaution to avoid unnecessary concentration risk for FCUs engaged in this type of activity. While the Board indicated that it might consider raising the limit later based on the success of FCU PAL programs, the Board has insufficient data to justify increasing the aggregate limit for either PALs I or PALs II loans at this time. Rather, based on the increased risk to FCUs related to high-cost, small-dollar lending, the Board believes that the 20 percent aggregate limit for both PALs I and PALs II loans is appropriate. The final rule includes a corresponding provision in § 701.21(c)(7)(iv)(*8*) to avoid any confusion regarding the applicability of the aggregate limit to PALs I and PALs II loans.

Many commenters asked the Board to exempt low-income credit unions (LICUs) and credit unions designated as community development financial institutions (CDFIs) from the 20 percent aggregate limit for PALs loans. These commenters argued that making PALs loans is part of the mission of LICUs and CDFIs and, therefore, the Board should not hinder these credit unions from making PALs loans to their members. Another commenter requested that the Board eliminate the aggregate limit for PALs loans entirely for any FCU that offers PALs loans to their members. The Board did not raise this issue in the PALs II NPRM. Accordingly, the Board does not believe it would be appropriate under the Administrative Procedure Act to consider these requests at this time. However, the Board will consider the commenters' suggestions and may revisit the aggregate limit for PALs loans in the future if appropriate.

Other commenters to the PALs II NPRM asked for clarification regarding the underwriting criteria that an FCU must use in connection with a PALs loan. Specifically, commenters requested guidance on whether an FCU should consider a borrower's debt burden in addition to monthly income or deposit activity when making a PALs loan. The Board has not historically required specific underwriting standards for PALs loans. Rather, the Board has allowed an FCU to develop its own lending policies based on its risk tolerance.[33] At a minimum, however, the Board has recommended that an FCU develop underwriting standards that ''account for a member's need for quickly available funds, while adhering to principles of responsible lending.''[34] This includes examining a borrower's ''proof of employment or income, including at least two recent paycheck stubs'' to determine a borrower's repayment ability as well as ''developing standards for maturity lengths and loan amounts so a borrower can manage repayment of the loan.''[35]

The Board continues to believe that an FCU is in the best position to develop its own underwriting standards based on its risk tolerance as long as those standards are consistent with responsible lending principles. While the Board has historically only provided guidance on minimum standards for determining a borrower's recurring income as the key criteria for eligibility for a PALs loan, that does not mean that an FCU may ignore a borrower's debt burden when determining whether to grant a PALs loan. Rather, the FCU must consider the borrower's entire financial position, including debt burden, and make an informed judgment consistent

[32] *See* 12 CFR 1026.4(b)(2).

[33] *See* Short-Term, Small Amount Loans, 75 FR 58285, 58288 (Sept. 24, 2010).

[34] 12 CFR 701.21(c)(7)(iii)(B)(*2*).

[35] *Id.*

with responsible lending principles regarding whether to extend a PALs loan to a borrower. Accordingly, the FCU should conduct some inquiry into whether the borrower can manage to repay the PALs loan without the need for additional PALs loans or traditional payday loans. When considering the application of a member with prior a history at the credit union, a review of credit and debit activity in their account may be sufficient to make this determination.

*Section 701.21(c)(7)(iv)—Payday Alternative Loans (PALs II)*

The final rule creates a new provision, § 701.21(c)(7)(iv), that sets forth the requirements for PALs II loans. In the PALs II NPRM, a majority of commenters asked that the Board combine the PALs I rule and proposed PALs II rule together in a single PALs regulation. Most of the commenters argued strongly that one PALs loan regulation would reduce confusion and provide FCUs with greater flexibility to structure their PAL programs in ways that best serve their members.

A small number of commenters raised serious concerns regarding the applicability of the CFPB's payday lending rule [36] should the Board adopt any changes to the PALs I rule. The CFPB's payday lending rule establishes consumer protections for certain high-cost credit products, including payday loans, and deems some credit practices related to those products to be unfair or abusive in violation of the Consumer Financial Practices Act.[37] However, the CFPB's payday lending rule provides a ''safe harbor'' for any loan that is made by an FCU in compliance with the PALs I rule with an explicit cross-reference to § 701.21(c)(7)(iii).[38] These commenters argued that any changes to the PALs I rule may eliminate the safe harbor for FCUs in the CFPB's rule. To allow FCUs to continue to avail themselves of the safe harbor, the commenters requested that the Board adopt the PALs II rule as a separate provision within the NCUA's general lending rule.[39]

The CFPB has proposed amendments to certain aspects of its payday lending rule.[40] Because the regulatory landscape with respect to payday lending remains somewhat uncertain until the Bureau completes the rulemaking process, the Board believes that adopting the PALs II rule as a separate provision within the NCUA's general lending rule is appropriate at this time to preserve the availability of the safe harbor for FCUs that offer PALs loans that conform to the requirements of the PALs I rule.

Membership Requirement

Current § 701.21(c)(7)(iii)(A)(*6*) requires a borrower to be a member of an FCU for at least one month before the FCU can make a PALs I loan to that borrower.[41] However, an FCU may establish a longer period as a matter of business judgment. The PALs II NPRM proposed to remove this minimum membership time requirement for PALs II loans. The purpose of this change was to allow an FCU to make a PAL II loan to any member borrower that needs access to funds immediately and would otherwise turn to a payday lender to meet that need.

Many of the commenters that addressed this issue favored removing the minimum membership time requirement with respect to PALs II loans. These commenters argued that this change would provide an FCU with the flexibility necessary to serve member borrowers that need immediate access to temporary liquidity who might otherwise turn to a payday lender. In contrast, a few commenters argued against this change, noting that that a minimum membership requirement is a prudent lending practice that helps an FCU establish a meaningful relationship with a potential borrower before offering a PALs II loan to that borrower.

The Board agrees that establishing a meaningful relationship with a potential borrower is a prudent lending practice and protects an FCU from certain risks. Accordingly, the Board encourages FCUs to consider establishing a minimum membership requirement as a matter of sound business judgment. However, the Board believes that granting PALs II loans to member borrowers, who need immediate access to funds, is a better alternative than having those borrowers take out predatory payday loans and wait for 30 days before rolling that predatory payday loan over into a PALs II loan, or worse, never applying for a PALs II loan. Therefore, the Board is adopting this aspect of the PALs II NPRM as proposed. The Board notes, however, that this final rule does not prohibit a credit union from setting a minimum membership term, but it is not required to do so.

*Section 701.21(c)(7)(iv)(A)(1)*

The PALs I rule limits the principal amount of a PALs I loan to not less than $200 or more than $1,000.[42] In contrast, the PALs II NPRM proposed to allow an FCU to offer a PALs II loan with a loan amount up to $2,000 without any minimum loan amount. The Board believes that a higher maximum and no minimum loan amount will allow an FCU to meet the demands of more segments of the payday loan market. Furthermore, the PALs II NPRM provided that a higher maximum loan amount will allow some borrowers to cover a larger financial emergency or to consolidate multiple payday loans into a PALs II loan, thereby providing a pathway to mainstream financial products and services offered by credit unions.

Maximum Loan Amount

Many commenters argued against the $2,000 maximum loan amount as too low. These commenters argued that $2,000 is insufficient to cover most large financial emergencies that prompt a borrower to resort to a payday loan or to allow a borrower to consolidate all of the borrower's payday loans. Some of these commenters, however, also argued that a larger maximum loan amount would be more profitable and allow an FCU to make sufficient interest to cover the cost of this type of lending.

In contrast, some commenters argued that allowing an FCU to charge a 28 percent APR for a $2,000 PALs II loan is a slippery slope to allowing an FCU to operate outside of the usury ceiling. These commenters noted that larger, longer-term loans provide increased revenue to the credit union and, therefore, the Board should not adopt a special exception from the general usury ceiling for these types of products.

While the Board recognizes that $2,000 may be insufficient to cover a larger financial emergency or to allow a borrower to consolidate a considerable number of payday loans, it nevertheless believes that allowing an FCU to offer a $3,000 or $4,000 loan at 28 percent interest is too high a limit and would violate the spirit of the FCU Act. In adopting the PALs I rule, the Board reluctantly established a separate usury ceiling for PALs I loans after a careful determination than an FCU could not

[36] 12 CFR part 1041.

[37] *See* 12 CFR 1041.1(b) (purpose).

[38] 12 CFR 1041.3(e)(4).

[39] In addition, as noted in the NPRM, the CFPB's current payday lending rule conditionally exempts ''alternative loans,'' which covers loans that meet certain PALs I requirements. The Board notes that the CFPB's rule does not include the minimum membership period or limitation on the number of loans in a six-month period among the criteria for the exemption. The Board's decision to limit the number of loans that may be made in a six-month period does not affect this exemption because the CFPB's rule does not include the number of loans as a criterion for the exemption.

[40] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 FR 4252 (Feb. 14, 2019).

[41] 12 CFR 701.21(c)(7)(iii)(A)(*6*).

[42] 12 CFR 701.21(c)(7)(iii)(A)(*1*).

provide a reasonable alternative to a payday loan under the general usury ceiling. By allowing an FCU to charge a higher interest rate, the Board sought to create a regulatory structure that allowed an FCU to offer a responsible payday loan alternative to members in a prudent manner.

The Board believes that $2,000 is a reasonable limit for the vast majority of PALs II loan borrowers. Accordingly, the Board is also adopting this aspect of the PALs II NPRM as proposed.

Minimum Loan Amount

Several commenters expressed support for removing the minimum loan amount as a means of allowing an FCU to tailor its PALs II program to the unique needs of its members. In contrast, other commenters argued that removing the minimum loan amount would result in a triple digit APR comparable to a traditional payday loan for any PALs II loan under $100 where the credit union also charges an application fee.

The Board believes that an FCU should have the flexibility to meet borrower demand to avoid the need for those borrowers to resort to a traditional payday loan. While the total cost of credit may be high for these loans, the PALs II rule provides significant structural safeguards not present in most traditional payday loans.

Furthermore, the Board does not believe it is prudent for an FCU to require a member to borrow more than necessary to meet the borrower's demand for funds. Establishing a minimum PALs II loan amount would require a borrower to carry a larger balance and incur additional interest charges to avoid an apparently high APR when a smaller PALs II loan would satisfy that borrower's need for funds without the additional interest charges. On balance, the Board believes that the borrower's real need to avoid additional charges outweighs the need to avoid the appearance of a higher APR for smaller PALs II loans. Accordingly, the Board is adopting this aspect of the PALs II NPRM as proposed.

Nevertheless, the Board is mindful that allowing an FCU to charge an application fee up to $20 in connection with a PALs II loan less than $100 is problematic. Depending on the facts and circumstances, the Board believes that charging a $20 application fee for a low amount financed may take unfair advantage of the inability of the borrower to protect his or her interests, especially where minimal underwriting is expected to be performed. The Board reminds commenters that the application fee is to recoup the actual costs associated with processing an application. And more importantly, the $20 maximum amount allowed under this rule is the ceiling, not the floor. Any application fee charged by an FCU should be commensurate with the level of underwriting necessary to process a PALs II loan. Accordingly, the NCUA Board will instruct examiners to thoughtfully scrutinize the application fee charged for a PALs II loan less than $200.

*Section 701.21(c)(7)(iv)(A)(2)*

The PALs I rule currently limits loan maturities to a minimum of one month and a maximum of 6 months.[43] The PALs II NPRM proposed to allow an FCU to make a PALs II loan with a minimum maturity of one month and a maximum maturity of 12 months. The PALs II NPRM provided that the longer loan term will allow an FCU making a larger PALs II loan to establish a repayment schedule that is affordable for the borrower while still fully amortizing the loan.

All of the commenters that addressed this issue favored a maximum loan term of at least one year. A few commenters believed that a maximum loan term of one year is too short, allowing borrowers insufficient time to pay off larger PALs II loans. These commenters favored a more flexible maximum loan term to allow an FCU to establish a repayment schedule that is appropriate for the unique needs of each individual borrower. Other commenters advocated for the removal of any maximum maturity limit to allow an FCU the greatest amount of flexibility to establish an affordable repayment schedule. A few commenters also suggested that the Board increase the minimum loan term to 90 days to make PALs II loans safer for borrowers.

Each group of commenters made a reasonable argument why the Board should adopt a flexible maximum loan term. After considering these varied viewpoints, the Board has determined to finalize this aspect of the PALs II NPRM as proposed. Should the Board engage in any future rulemaking regarding PALs loans, it will further consider the commenters' suggestions along with any applicable data gathered on PALs II loans.

*Section 701.21(c)(7)(iv)(A)(3)*

The PALs I rule currently prohibits an FCU from making more than three PALs I loans in a rolling 6-month period to a single borrower.[44] The PALs II NPRM proposed to remove that restriction for PALs II loans. However, an FCU would not be allowed not make more than one of any type of PALs loan, whether a PALs I or PALs II loan, to a single borrower at a time.

Many of the commenters that addressed this issue favored removing the limit on the number of PALs II loans that an FCU may make to a borrower over 6 months as long as the Board retained the restriction of making no more than one PALs loan to a single borrower at a time. These commenters argued that this would provide FCUs with added flexibility to meet the needs of their members, particularly those members that currently use payday loans as a source of temporary liquidity. Other commenters also favored removing the limit, but opposed retaining the limit of one loan per borrower at a time.

Some commenters opposed removal of the limit on the number of PALs II loans an FCU can make to a borrower in a 6-month period. These commenters argued that such a change would allow an FCU to churn loans each month, charging an application fee for each PALs loan, with little economic benefit to the borrower similar to a predatory payday loan. According to these commenters, this would create a strong incentive for FCUs to adopt a business model that maximizes application fee revenue at the expense of the borrower contrary to the purposes of PALs loans.

The Board has reconsidered this aspect of the proposed rule and agrees that removing the limit on the number of PALs II loans an FCU may make to a single borrower at a time may encourage some FCUs to adopt a business model that maximizes fee revenue at the expense of the borrower. The Board fashioned the structural safeguards in the PALs I rule to eliminate the business practices common in the predatory payday lending industry that trap borrowers in cycles of repeated borrowings. Accordingly, the Board is not adopting this aspect of the PALs II NPRM in the final rule.

*Section 701.21(c)(7)(iv)(A)(8)*

The final rule adds a new § 701.21(c)(7)(iii)(A)(*8*) prohibiting an FCU from charging an overdraft or NSF fee in connection with a PALs II loan payment drawn against a borrower's account.[45] In the PALs II NPRM, the Board asked whether the NCUA should prohibit overdraft or NSF fees charged

[43] 12 CFR 701.21(c)(7)(iii)(A)(*2*).

[44] 12 CFR 701.21(c)(7)(iii)(A)(*3*).

[45] This includes extended overdraft fees or NSF fees that the FCU would assess against the borrower for paying items presented for payment after the PAL payment creates a negative balance in the borrower's account.

in connection with any PALs loan payments. Half of the commenters that responded to this question answered in the affirmative, arguing that an FCU could use overdraft fees in a predatory manner to extract additional revenue from a PALs loan borrower. These commenters also felt that allowing overdraft fees related to a PALs loan is contrary to providing borrowers with a meaningful pathway towards mainstream financial products and services because additional fees can have a devastating impact on the borrower's financial health and leave the borrower trapped in a ''cycle of debt.''

The remainder of the commenters that responded to this question opposed prohibiting an FCU from charging overdraft fees related to PALs loans. These commenters argued that the decision to extend an overdraft loan and charge overdraft fees should be business decisions for each individual FCU and that the Board should not treat overdraft or NSF fees charged in connection with a PALs loan payment any differently from other circumstance when a borrower overdraws an account to make a loan payment. Finally, some cautioned that prohibiting overdraft or NSF fees could pose a safety and soundness risk to an FCU if a borrower routinely overdraws an account because of a PALs loan.

The Board agrees that the decision to extend an overdraft loan to a borrower is a business decision for each FCU to make in accordance with its own risk tolerance. Generally, the Board also believes that an FCU charging a reasonable and proportional overdraft fee in connection with an overdraft loan is appropriate in most cases to compensate the credit union for providing an important source of temporary liquidity to borrowers. However, the Board has serious fairness [46] concerns regarding the potential harm to borrowers caused by allowing an FCU to charge overdraft or NSF fees in connection with a PALs II loan payment given the increased principal amount allowed for PALs II loans.

Charging overdraft fees related to a PALs II loan payment is likely to cause substantial borrower harm.[47] The Board envisions PALs II loan borrowers typically will be in a vulnerable financial position and unable to take on additional expenses. Charging an overdraft fee in this situation will likely weaken the borrower's financial position further and can have cascading consequences including an inability to repay the PALs II loan. Moreover, charging an overdraft fee in addition to requiring repayment of the overdrawn balance makes the borrower even less likely to meet other expenses or obligations.

This type of harm is also not reasonably avoidable by the borrower.[48] A borrower cannot reasonably avoid injury that results from an unpredictable event.[49] The decision whether to extend an overdraft loan and charge an overdraft fee, rests entirely with the FCU and not with the borrower. Accordingly, the borrower does not have an ability to anticipate which items that could overdraw the account that the FCU will honor and take appropriate action to minimize the potential for overdraft fees. Even if the borrower, in the abstract, should have the ability to anticipate such an event, behavioral economics research shows that borrowers are prone to hyperbolic discounting of the risk of potential negative events, making such an ability to anticipate the overdraft more theoretical than actual.[50]

Moreover, a borrower cannot reasonably avoid injury that results from an involuntary event.[51] The Federal Trade Commission (FTC) has compiled an extensive factual record showing that ''the precipitating cause of default is usually a circumstance or event beyond the debtor's immediate control.'' [52] Accordingly, ''among those defaults that do occur, the majority are not reasonably avoidable by consumers. Instead, default is a response to events that are largely beyond the consumer's control.'' [53] Although some precaution ''can reduce the risk of default . . . no reasonable level of precautions can eliminate the risk. Moreover, some consumers are unable to take various precautionary steps.'' [54] While an overdraft loan prevents a borrower from defaulting, many of the same circumstances that would cause a borrower to default would also cause a borrower to overdraw an account. Furthermore, in the case of PALs II loan borrowers, the member borrower may have limited ability to take precautionary steps to limit the harm caused by overdrafts given the borrower's financial position.

Allowing an FCU to charge overdraft fees related to a PALs II loan payment offers an insubstantial benefit to borrowers or competition in the payday lending marketplace when measured against the potential for substantial borrower harm.[55] The Board recognizes that allowing overdraft or NSF fees will make an FCU more likely to extend an overdraft loan to provide temporary liquidity for a PALs II loan borrower. However, the tradeoff for that liquidity is the potential for additional overdraft fees that could cause the borrower to experience other negative consequences such as the loss of a vehicle or eviction while trying to pay off overdraft fees. Moreover, while the Board acknowledges that this provision could result in borrowers receiving less overdraft loans or FCUs receiving less fee income, the Board believes that overdraft loans related to PALs II loans leave the borrower less financially stable and that FCUs already receive sufficient income through application fees and higher APRs charged on PALs II loan balances. Accordingly, the Board believes, on balance, that potential borrower harm outweighs potential tangible benefits.

Finally, the Board believes that allowing overdraft fees related to a PALs

[46] A business practice is unfair if it is likely to cause substantial consumer harm that is not reasonably avoidable by the consumer and not otherwise outweighed by any countervailing benefits to consumers or competition. *See* 15 U.S.C. 45(n).

[47] A harm may be ''substantial'' if ''a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers . . . [i]n most cases, substantial injury would involve monetary or economic harm or unwarranted health and safety risks.'' *See* Sen. Rep. No. 130, 103d Cong. 2d Sess. 12 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1787–1788.

[48] ''A harm is 'reasonably avoidable' if consumers 'have reason to anticipate the impending harm and the means to avoid it,' or if consumers are aware of, and are reasonably capable of pursuing, potential avenues toward mitigating the injury after the fact.'' *Davis* v. *HSBC Bank Nev., N.A.,* 691 F.3d 1152, 1168–69 (9th Cir. 2012) (*citing Orkin Exterminating Co.* v. *FTC,* 849 F.2d 1354, 1365–66 (11th Cir. 1988)). Thus, ''[i]n determining whether consumers' injuries were reasonably avoidable, courts look to whether the consumers had a free and informed choice.'' *FTC* v. *Neovi, Inc.,* 604 F.3d 1150, 1158 (9th Cir. 2010).

[49] Trade Regulation Rule; Credit Practices, 49 FR 7740, 7747 (Mar 1. 1984).

[50] *See e.g.,* Debra Pogrund Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities,* 5 N.Y.U. J. L. & Bus. 617, 659–660 (2009).

[51] Trade Regulation Rule; Credit Practices, 49 FR 7740, 7747–8 (Mar 1. 1984).

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] In assessing whether a business practice is ''not outweighed by countervailing benefits to consumers or to competition,'' one is not required to ''quantify the detrimental and beneficial effects of the practice in every case . . . [i]n many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible.'' Rather, one must ''carefully evaluable the benefits and costs . . .considering reasonably available evidence.'' *See* Sen. Rep. No. 130, 103d Cong. 2d Sess. 12 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1787–1788. If the net effect of a particular business practice is injurious to consumers, then the practice is unfair. *See Am. Fin. Svcs Ass'n* v. *FTC,* 767 F.2d 957 (D.C. Cir. 1985).

II loan payment is contrary to one of the goals of PALs loans,[56] which is to provide borrowers with meaningful pathways towards mainstream financial products and services offered by credit unions. Accordingly, the Board is adopting a provision in the final rule to prohibit an FCU from charging an overdraft or NSF fee in connection with a PALs II loan payment drawn against a borrower's account. It may consider imposing similar requirement on all PALs loans in a future rulemaking should the Board determine that such a restriction is necessary for all PALs loans.

The Board recognizes that certain automated internal processes may cause an FCU to violate this prohibition on charging an overdraft or NSF fee in connection with a PALs II loan payment inadvertently. The Board notes that any FCU that charges an overdraft or NSF fee in connection with a PALs II loan payment should immediately refund the charge to the borrower. If the FCU refunds the charge to the borrower, the Board will not consider the FCU to have violated this aspect of the PALs II rule.

## VI. Regulatory Procedures

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[57] This rule will provide a limited number of FCUs making PALs with additional flexibility to make such loans. Accordingly, the Board believes that the rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. The NCUA triggers a SBREFA reporting requirement when the agency issues a final rule as defined by section 551 of the Administrative Procedure Act. As required by SBREFA, the NCUA submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The OMB determined that the rule is not major. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

*Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), the NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. For purposes of the PRA, an information collection may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as a paperwork burden. The information collection requirements of § 701.21 of NCUA's regulations are assigned OMB control number 3133–0092 and this rule would not impose any new paperwork burden.

*Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[58]

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.[59] The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule 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. The NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

## List of Subjects in 12 CFR Part 701

Credit unions, Federal credit unions.

By the National Credit Union Administration Board on September 19, 2019.

**Gerard S. Poliquin,**

*Secretary of the Board.*

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 701 as follows:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.21 by revising paragraph (c)(7)(iii) and adding paragraph (c)(7)(iv) to read as follows:

### § 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(iii) *Payday alternative loans (PALs I)*—(A) *Minimum requirements for PALs I.* Notwithstanding any other provision of this section, a federal credit union may charge an interest rate that is 1000 basis points above the maximum interest rate established by the Board under paragraph (c)(7)(ii) of this section provided the federal credit union is offering closed-end credit, as defined in § 1026.2(a)(10) of this title, in accordance with the following conditions:

(*1*) The principal of the payday alternative loan is not less than $200 or more than $1,000;

(*2*) The payday alternative loan has a minimum maturity of one month and a maximum maturity of six months;

(*3*) The federal credit union does not make more than three payday alternative loans provided under either this paragraph (c)(7)(iii) or paragraph (c)(7)(iv) of this section in any rolling six-month period to any one borrower and does not make more than one payday alternative loan provided under either this paragraph (c)(7)(iii) or paragraph (c)(7)(iv) of this section at a time to any borrower;

(*4*) The federal credit union does not rollover any payday alternative loan provided under this paragraph (c)(7)(iii) or paragraph (c)(7)(iv) of this section, provided that the prohibition against rollovers does not apply to an extension of a payday alternative loan term within

[56] When determining whether a business practice is fair, one may consider established public policy as evidence to be considered with all over evidence. However, public policy may not serve as the primary basis for determining the fairness of a business practice. *See* 15 U.S.C. 45(n). At least some older cases have found excessive bank fees to be unconscionable. *See Perdue* v. *Crocker Nat'l Bank,* 702 P.2d 503 (Cal. 1985).

[57] 5 U.S.C. 603(a).

[58] Public Law 105–277, section 654, 112 Stat. 2681, 2681–581 (1998).

[59] 64 FR 43255 (Aug. 4, 1999).

the maximum loan term set forth in paragraph (c)(7)(iii)(A)(*3*) of this section that does not include any additional fees assessed or extend additional credit to the borrower;

(*5*) The federal credit union fully amortizes the payday alternative loan;

(*6*) The federal credit union requires the borrower to be a member of the credit union for at least one month before receiving a payday alternative loan provided under this paragraph (c)(7)(iii);

(*7*) The federal credit union charges a reasonable application fee to all members applying for a new payday alternative loan offered under this paragraph (c)(7)(iii) that reflects the actual costs associated with processing the application, but that in no case exceeds $20; and

(*8*) The federal credit union includes, in its written lending policies, a limit on the aggregate dollar amount of payday alternative loans made under this paragraph (c)(7)(iii) and paragraph (c)(7)(iv) of this section that does not exceed an aggregate of 20% of net worth and implements appropriate underwriting guidelines to minimize risk, such as, requiring a borrower to verify employment by providing at least two recent pay stubs.

(B) *PALs I guidance and best practices.* In developing a successful payday alternative loan program, a federal credit union should consider how the program would benefit a member's financial well-being while considering the higher degree of risk associated with this type of lending. The guidance and best practices are intended to help federal credit unions minimize risk and develop a successful program, but are not an exhaustive checklist and do not guarantee a successful program with a low degree of risk.

(*1*) *Program features.* Several features that may increase the success of a payday alternative loan program and enhance member benefit include adding a savings component, financial education, reporting of members' payment of payday alternative loans to credit bureaus, or electronic loan transactions as part of a payday alternative loan program. In addition, although a federal credit union cannot require members to authorize a payroll deduction, a federal credit union should encourage or incentivize members to utilize payroll deduction.

(*2*) *Underwriting.* Federal credit unions should develop minimum underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending. Underwriting standards should address required documentation for proof of employment or income, including at least two recent paycheck stubs. Federal credit unions should be able to use a borrower's proof of recurring income as the key criterion in developing standards for maturity lengths and loan amounts so a borrower can manage repayment of the loan. For members with established accounts, federal credit unions should only need to review a member's account records and proof of recurring income or employment.

(*3*) *Risk avoidance.* Federal credit unions should consider risk avoidance strategies, including requiring members to participate in direct deposit and conducting a thorough evaluation of the federal credit union's resources and ability to engage in a payday alternative loan program.

(iv) *Payday alternative loans (PALs II)*—(A) *Minimum requirements for PALs II.* Notwithstanding any other provision of this section, a federal credit union may charge an interest rate that is 1000 basis points above the maximum interest rate established by the Board under paragraph (c)(7)(ii) of this section provided the federal credit union is offering closed-end credit, as defined in § 1026.2(a)(10) of this title, in accordance with the following conditions:

(*1*) The principal of the payday alternative loan is not more than $2,000;

(*2*) The payday alternative loan has a minimum maturity of one month and a maximum maturity of 12 months;

(*3*) The federal credit union does not make more than three payday alternative loans provided either under paragraph (c)(7)(iii) of this section or this paragraph (c)(7)(iv) in any rolling six-month period to any one borrower and does not make more than one payday alternative loan provided under either paragraph (c)(7)(iii) of this section or this paragraph (c)(7)(iv) at a time to any borrower;

(*4*) The federal credit union does not rollover any payday alternative loan provided under paragraph (c)(7)(iii) of this section or this paragraph (c)(7)(iv), provided that the prohibition against rollovers does not apply to an extension of a payday alternative loan term within the maximum loan term set forth in paragraph (c)(7)(iv)(A)(*3*) of this section that does not include any additional fees assessed or extend additional credit to the borrower;

(*5*) The federal credit union fully amortizes the payday alternative loan;

(*6*) The federal credit union charges a reasonable application fee to all members applying for a new payday alternative loan offered under this paragraph (c)(7)(iv) that reflects the actual costs associated with processing the application, but that in no case exceeds $20;

(*7*) The federal credit union does not assess a fee or charge, including a non-sufficient funds fee, on the borrower's account pursuant to the federal credit union's overdraft service, as defined in § 1005.17(a) of this title, in connection with any payday alternative loan provided under this paragraph (c)(7)(iv); and

(*8*) The federal credit union includes, in its written lending policies, a limit on the aggregate dollar amount of payday alternative loans made under paragraph (c)(7)(iii) of this section and this paragraph (c)(7)(iv) that does not exceed an aggregate of 20% of net worth and implements appropriate underwriting guidelines to minimize risk, such as, requiring a borrower to verify employment by providing at least two recent pay stubs.

(B) *PALs II guidance and best practices.* In developing a successful payday alternative loan program, a federal credit union should consider how the program would benefit a member's financial well-being while considering the higher degree of risk associated with this type of lending. The guidance and best practices are intended to help federal credit unions minimize risk and develop a successful program, but are not an exhaustive checklist and do not guarantee a successful program with a low degree of risk.

(*1*) *Program features.* Several features that may increase the success of a payday alternative loan program and enhance member benefit include adding a savings component, financial education, reporting of members' payment of payday alternative loans to credit bureaus, or electronic loan transactions as part of a payday alternative loan program. In addition, although a federal credit union cannot require members to authorize a payroll deduction, a federal credit union should encourage or incentivize members to utilize payroll deduction.

(*2*) *Underwriting.* Federal credit unions should develop minimum underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending. Underwriting standards should address required documentation for proof of employment or income, including at least two recent paycheck stubs. Federal credit unions should be able to use a borrower's proof of recurring income as the key criterion in developing standards for maturity lengths and loan amounts so a borrower

can manage repayment of the loan. For members with established accounts, federal credit unions should only need to review a member's account records and proof of recurring income or employment.

(*3*) *Risk avoidance.* Federal credit unions should consider risk avoidance strategies, including requiring members to participate in direct deposit and conducting a thorough evaluation of the federal credit union's resources and ability to engage in a payday alternative loan program.

* * * * *

[FR Doc. 2019–20821 Filed 9–30–19; 8:45 am]

**BILLING CODE 7535–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2019–0318; Product Identifier 2019–NM–015–AD; Amendment 39–19745; AD 2019–19–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. This AD was prompted by an analysis conducted on Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes that identified structural areas that are susceptible to widespread fatigue damage (WFD). This AD requires reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 5, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2019.

**ADDRESSES:** For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0318.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0318; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

**SUPPLEMENTARY INFORMATION:**

### Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0276R1, dated January 11, 2019; corrected January 15, 2019 (''EASA AD 2018–0276R1'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The NPRM published in the **Federal Register** on May 16, 2019 (84 FR 22075). The NPRM was prompted by an analysis conducted on Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes that identified structural areas that are susceptible to WFD. The NPRM proposed to require reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary.

The FAA is issuing this AD to address structural areas that are susceptible to WFD, which, if not corrected, could lead to crack initiation and undetected propagation, reducing the structural integrity of the airplane, possibly resulting in rapid depressurization and consequent injury to occupants. See the MCAI for additional background information.

### Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. Commenters Christopher Cracraft, Samuel Hazo, and American Airlines (AAL) stated that they support the NPRM.

### Request To Use Later-Approved Service Information

AAL requested that the FAA provide a statement in the final rule confirming its approval of later-approved service information since the FAA rarely allows such practice without an alternative method of compliance (AMOC).

This AD does not exclude the ''Ref. Publications'' section of EASA AD 2018–0276R1, so that section is applicable to this AD, which addresses the commenter's concern. The FAA does not find it necessary to provide an additional statement regarding this issue in this AD. Therefore, the FAA has not changed this AD regarding this issue.

### Request To Allow Alternative Corrosion-Inhibiting Compounds (CICs)

Delta Airlines (DAL) generally supported the NPRM but requested that the FAA allow operators to use their CICs, which are controlled by their FAA-principal maintenance inspector (PMI), for their corrosion prevention and control program (CPCP). DAL stated that the instructions in the service information include the reapplication of CICs. DAL commented that the CICs do not always align with the CIC products specified in the service information, which forces operators to apply for an AMOC for use of their preferred CICs.

In addition, DAL stated that corrosion is not the subject of the unsafe condition in the proposed AD, and operators should be able maintain their airplanes at their discretion through their FAA-accepted programs. DAL commented that CICs that are PMI accepted have shown an equivalent level of safety, and their use should continue to be accepted

since they are not the subject of the unsafe condition in the NPRM.

The FAA disagrees with the commenter's request. The CICs are identified in certain Airbus service information under tasks that are identified as ''required for compliance'' (RC), and that service information is specified in the MCAI, which is incorporated by reference in this AD. Therefore, any substitutions or changes to procedures or tests identified as RC require approval of an AMOC. Under the provisions of paragraph (j)(1) of this AD, the FAA will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the change provides an acceptable level of safety. The FAA has not changed this AD regarding this issue.

**Request To Issue Multiple Proposed ADs**

AAL requested that the FAA issue one proposed AD for each of the 24 service documents specified in EASA AD 2018–0276R1 as a way to control the actions and thresholds. AAL stated that one proposed AD per service document would alleviate the need for multiple revisions to a single ''master'' AD if issues arise in a particular service document. AAL also commented that if the ''master'' AD is revised or superseded, it must revise each internal document (*i.e.,* engineering orders (E.O.)) that affects that AD versus just the one specific E.O. that matches the service information that resulted in the AD revision. AAL commented that revising internal documents also affects AMOCs. AAL stated that revising internal documents is a heavy burden on the operator and on the local FAA authority tasked to review its documents for compliance.

AAL commented that issuing one ''master'' AD places a burden on its information technology (IT) system. AAL stated that its maintenance tracking system (''SCEPTRE'') permits the creation of one tracking method for one AD, and will not sufficiently be able to track multiple service information thresholds under one AD as its system does not support this.

In addition, AAL stated that it must report its AD status to the FAA and that ADs for all airplane numbers must show the AD compliance date or forecasted due date on the report. AAL commented that the thresholds on several of the service documents are so far out that they may never be reached, and the AD report would never show compliance even though the operator is taking actions on the lower-threshold service information.

The FAA disagrees with the commenter's request. The FAA has determined that in general, issuing one AD for the same unsafe condition (as EASA has done in this case) is more efficient and provides adequate time to correct the specified unsafe condition. While it is understandable that a manufacturer would like to minimize IT issues involving its AD tracking system, the FAA typically follows the recommendations of the State of Design Authority (in this case EASA) for the compliance time and method for addressing the unsafe condition. In addition, issuing one AD per service document would require additional public notice and comment period, further delaying the actions required to address the specified unsafe condition. The FAA has not changed this AD in this regard.

**Conclusion**

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

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

**Related IBR Material Under 1 CFR Part 51**

EASA AD 2018–0276R1 describes procedures for reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 104 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Up to 413 work-hours × $85 per hour = $35,105 | Up to $125,190 | Up to $160,295 | Up to $16,670,680. |

The FAA has received no definitive data that would enable the FAA to provide cost estimates for the on-condition actions specified in this AD.

**Authority for This Rulemaking**

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify that this AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2019–19–09 Airbus SAS:** Amendment 39–19745; Docket No. FAA–2019–0318; Product Identifier 2019–NM–015–AD.

**(a) Effective Date**

This AD is effective November 5, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus SAS Model A330–223F and –243F airplanes.

(2) Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Airbus SAS Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Reason**

This AD was prompted by an analysis conducted on Airbus SAS Model A330–200 Freighter, –200, and –300 series airplanes that identified structural areas that are susceptible to widespread fatigue damage (WFD). The FAA is issuing this AD to address this condition, which could lead to crack initiation and undetected propagation, reducing the structural integrity of the airplane, possibly resulting in rapid depressurization and consequent injury to occupants.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0276R1, dated January 11, 2019; corrected January 15, 2019 (''EASA AD 2018–0276R1'').

**(h) Exceptions to EASA AD 2018–0276R1**

(1) The ''Remarks'' section of EASA AD 2018–0276R1 does not apply to this AD.

(2) Where paragraph (1) of EASA AD 2018–0276R1 specifies to modify the airplane in accordance with each applicable service bulletin as specified in Appendix 1 of EASA AD 2018–0276R1, this AD also requires the accomplishment of all applicable related investigative and corrective actions before further flight in accordance with each applicable service bulletin as specified in Appendix 1 of EASA AD 2018–0276R1.

(3) For airplanes already modified before the threshold specified in Table 2 of Appendix 1 of EASA AD 2018–0276R1 is reached, within 6 months after the effective date of this AD, obtain instructions for additional maintenance tasks (*e.g.,* modifications/inspections) from the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA); and accomplish those tasks within the compliance time specified therein. If approved by the DOA, the approval must include the DOA-authorized signature.

**(i) No Reporting Requirement**

Although certain service information referenced in EASA AD 2018–0276R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2018–0276R1 that contains RC procedures and tests: Except as required by paragraphs (h)(3) and (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0276R1, dated January 11, 2019; corrected January 15, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0318.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

**(l) Material Incorporated by Reference**

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

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

(i) European Aviation Safety Agency (EASA) AD 2018–0276R1, dated January 11, 2019; corrected January 15, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2018–0276R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on September 19, 2019.

**Suzanne Masterson,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–21240 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0482; Product Identifier 2019–NM–066–AD; Amendment 39–19743; AD 2019–19–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes; Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus SAS Model A310 series airplanes. This AD was prompted by a report indicating that the trimmable horizontal stabilizer (THS) actuator ball nut trunnion lower attachment was missing parts. This AD requires a one-time detailed inspection of the THS actuator right-hand spherical bearing and retaining parts (bolt, tab washer, and end cap) for correct installation of the retaining parts and correct bolt position, and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 5, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2019.

**ADDRESSES:** For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0482.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0482; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

**SUPPLEMENTARY INFORMATION:**

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300 series airplanes; Model A300–600 series airplanes; and Airbus SAS Model A310 series airplanes. The NPRM published in the **Federal Register** on June 25, 2019 (84 FR 29821). The NPRM was prompted by a report indicating that the THS actuator ball nut trunnion lower attachment was missing parts. The NPRM proposed to require a one-time detailed inspection of the THS actuator right-hand spherical bearing and retaining parts (bolt, tab washer, and end cap) for correct installation of the retaining parts and correct bolt position, and applicable corrective actions.

The FAA is issuing this AD to address missing THS actuator right-hand spherical bearings and retaining parts from the THS actuator ball nut trunnion lower attachment, which could lead to THS actuator failure, possibly resulting in loss of control of the airplane.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0078, dated March 29, 2019 (''EASA AD 2019–0078'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300 series airplanes; Airbus SAS Model A300–600 series airplanes; and Airbus SAS Model A310 series airplanes. The MCAI states:

> During maintenance on an A300–600 aeroplane, affected parts were found missing from THS actuator ball nut trunnion lower attachment. The THS actuator lower attachment has a fail-safe design through a primary and secondary load path, which ensures the load path continuity between the horizontal tail plane and the actuator. The primary load path is engaged thanks in particular to these affected parts.
>
> Investigation results highlighted that human error is the most likely scenario to have caused the affected parts to have been missing. In flight, absence of affected parts would cause THS actuator secondary load path engagement, which is designed to withstand the full loads only for a limited period of time.
>
> This condition, if not detected and corrected, could lead to THS actuator failure, possibly resulting in loss of control of the aeroplane.
>
> To address this potential unsafe condition, Airbus issued the applicable SB [Airbus Service Bulletin A300–27–0206; Airbus Service Bulletin A300–27–6073; and Airbus Service Bulletin A310–27–2108] to provide inspection instructions.
>
> For the reason described above, this [EASA] AD requires a one-time detailed inspection (DET) of the affected parts [for correct installation of the retaining parts and correct bolt position] to establish fleet-wide status and, depending on findings, accomplishment of applicable corrective action(s).

### Comments

The FAA has given the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. FedEx stated that it has no objection to the NPRM.

### Conclusion

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

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

### Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0078 describes procedures for a one-time detailed inspection of the THS actuator right-hand spherical bearing and retaining parts for correct installation of the

retaining parts and correct bolt position, and applicable corrective actions. Corrective actions include torqueing and securing the bolt with new lockwire, or installing a new dowel, end cap, washer, and bolt, and securing with new lockwire. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 2 work-hours × $85 per hour = $170 | $0 | $170 | $21,760 |

The FAA estimates the following costs to do any necessary on-condition repairs that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition repairs:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 2 work-hours × $85 per hour = $170 | (*) | * $170 |

* The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the on-condition repairs specified in this AD.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the other on-condition action specified in this AD.

**Authority for This Rulemaking**

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify that this AD:

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2019–19–07 Airbus SAS:** Amendment 39–19743; Docket No. FAA–2019–0482; Product Identifier 2019–NM–066–AD.

**(a) Effective Date**

This AD is effective November 5, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all the Airbus SAS airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A300 C4–605R Variant F airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Reason**

This AD was prompted by a report indicating that the trimmable horizontal stabilizer (THS) actuator ball nut trunnion lower attachment was missing the THS actuator right-hand spherical bearings and

retaining parts (bolt, tab washer, and end cap). The FAA is issuing this AD to address missing THS actuator right-hand spherical bearings and retaining parts from the THS actuator ball nut trunnion lower attachment, which could lead to THS actuator failure, possibly resulting in loss of control of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0078, dated March 29, 2019 (''EASA AD 2019–0078''). All provisions specified in EASA AD 2019–0078 apply in this AD.

**(h) Exceptions to EASA AD 2019–0078**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0078 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0078 does not apply to this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0078 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(j) Related Information**

For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

**(k) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0078, dated March 29, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0078, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0482.

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

Issued in Des Moines, Washington, on September 19, 2019.

**Suzanne Masterson,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–21237 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0193; Product Identifier 2018–NM–159–AD; Amendment 39–19711; AD 2019–16–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2018–22–13, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2018–22–13 required revising the existing airplane flight manual (AFM) to provide the flightcrew with updated procedures related to inboard aileron fault operations. This AD continues to require that AFM revision, and also requires modification of the electronic centralized aircraft monitoring (ECAM) procedures by installing an Airbus temporary quick change (ATQC) and activating an ECAM temporary change. This AD was prompted by a technical issue detected on the inboard aileron electrohydrostatic actuators that caused potential erroneous monitoring of those actuators. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 5, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 2019.

**ADDRESSES:** For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com*; internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0193.

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0193; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–22–13, Amendment 39–19486 (83 FR 55617, November 7, 2018) (''AD 2018–22–13''). AD 2018–22–13 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on April 8, 2019 (84 FR 13843). The NPRM was prompted by a technical issue detected on the inboard aileron electrohydrostatic actuators that caused potential erroneous monitoring of those actuators. The NPRM proposed to continue to require revising the existing AFM to provide the flightcrew with updated procedures related to inboard aileron fault operations. The NPRM also proposed to require modifying the ECAM procedures by installing an ATQC and activating an ECAM temporary change. The FAA is issuing this AD to address possible in-flight loss of inboard aileron control, consequent increased fuel consumption due to the resulting drag, and reduced control or performance of the airplane if one engine is also inoperative.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA AD 2018–0213R1, dated November 9, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states:

A technical issue was detected on the inboard aileron electro-hydrostatic actuators, causing potential erroneous monitoring of those actuators. Consequently, in-flight loss of inboard aileron control may occur, which, due to the resulting drag, would lead to increased fuel consumption.

This condition, if not corrected, and if combined with one engine inoperative, could result in reduced control or performance of the aeroplane.

To address this potential unsafe condition, Airbus issued the AFM TR [temporary revision] and Flight Operations Transmission (FOT) 999.0062/18, informing operators that Airbus provides two different Airbus Temporary Quick Changes (ATQC) to the Electronic Centralized Aircraft Monitoring (ECAM), depending on the installed FWS [flight warning system] standard, either STD [standard] S4/2.0 or STD S5/2.2, as applicable, and issued the applicable SB [service bulletin] accordingly, providing modification instructions.

For the reasons described above, this [EASA] AD requires amendment of the applicable AFM and installation of ATQC V4, followed by ECAM Temporary Change (ETC) activation, to update the procedures related to inboard aileron fault operations. This AD is considered to be an interim action and further AD action may follow.

This [EASA] AD is revised to amend the Applicability and correct some additional (minor) errors.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0193.

**Comments**

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

**Support for NPRM**

The Air Line Pilots Association, International (ALPA), and commenters Christian Maldonado, Claudia Galica, and Cristian Silva supported the NPRM.

**Request To Include Alternative Service Information**

Delta Airlines, Inc. (Delta), requested that the FAA revise paragraph (h)(1)(ii) of the proposed AD to allow installation of ATQC version 5 for FWS standard S5/2.2, in accordance with Airbus Service Bulletin A350–31–P032, dated February 28, 2019, instead of ATQC version 4. Delta asserted that version 5 is the next evolution and encompasses the items in version 4, so compliance would be maintained with the version 4 improvements. Delta added that allowing installation of version 5 in the proposed AD would prevent the need to request approval of an alternative method of compliance to install version 5.

The FAA partially agrees with the commenter's request. ATQC version 5 has also been found to mitigate the unsafe condition and is an acceptable method of compliance for this AD. However, version 5 cannot be installed if version 4 has not yet been installed. Therefore, all airplanes must install version 4, and any airplane may have version 5 installed afterwards. The FAA has revised paragraph (h)(1)(ii) accordingly.

**Conclusion**

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

**Related Service Information Under 1 CFR Part 51**

Airbus issued the following service information:

Service Bulletin A350–31–P028, dated September 17, 2018, describes procedures for installing ATQC standard V4 for FWS standard S4/2.0.

Service Bulletin A350–31–P029, dated September 17, 2018, describes procedures for installing ATQC standard V4 for FWS standard S5/2.2.

Service Bulletin A350–31–P030, dated September 17, 2018, describes procedures for activating ECAM temporary change code No. 27AF.

Service Bulletin A350–31–P032, dated February 28, 2019, describes procedures for installing ATQC standard V5 for FWS standard S5/2.2.

Airbus A350 Temporary Revision (TR) 113, Issue 1, dated August 17, 2018, provides updated procedures related to inboard aileron fault operations. (This document was originally incorporated by reference in AD 2018–22–13 as of November 23, 2018 (83 FR 55617, November 7, 2018). However, AD 2018–22–13 had identified this TR with an incorrect, pre-approval date of July 27, 2018. The FAA has provided the correct date of the TR throughout this AD.)

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained actions from AD 2018-22-13 | 1 work-hour × $85 per hour = $85 | $0 | $85 | $935 |
| New actions | 4 work-hours × $85 per hour = $340 | 0 | 340 | 3,740 |

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

**Authority for This Rulemaking**

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify that this AD:

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–22–13, Amendment 39–19486 (83 FR 55617, November 7, 2018), and adding the following new AD:

**2019–16–08 Airbus SAS:** Amendment 39–19711; Docket No. FAA–2019–0193; Product Identifier 2018–NM–159–AD.

**(a) Effective Date**

This AD is effective November 5, 2019.

**(b) Affected ADs**

This AD replaces AD 2018–22–13, Amendment 39–19486 (83 FR 55617, November 7, 2018) (''AD 2018–22–13'').

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, except those on which Airbus modifications 113758 and 113759 have been embodied in production.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Reason**

This AD was prompted by a technical issue detected on the inboard aileron electrohydrostatic actuators that caused potential erroneous monitoring of those actuators. The FAA is issuing this AD to address possible in-flight loss of inboard aileron control, consequent increased fuel consumption due to the resulting drag, and reduced control or performance of the airplane if one engine is also inoperative.

**(f) Compliance**

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

**(g) Retained Revision of Existing Airplane Flight Manual (AFM), With Revised Compliance Language and Corrected Temporary Revision (TR) Date**

This paragraph restates the requirements of paragraph (g) of AD 2018–22–13, with revised compliance language and a corrected TR date. At the applicable time specified in paragraph (g)(1) or (2) of this AD, revise the Abnormal Procedures section of the existing AFM to include the information in Airbus A350 TR 113, Issue 1, dated August 17, 2018, which introduces updated procedures related to inboard aileron fault operations. This may be done by inserting a copy of Airbus A350 TR 113, Issue 1, dated August 17, 2018, into the existing AFM. When Airbus A350 TR 113, Issue 1, dated August 17, 2018, has been included in general revisions of the existing AFM, the general revisions may be inserted into the existing AFM, provided the relevant information in the general revisions is identical to that in Airbus A350 TR 113, Issue 1, dated August 17, 2018, and the TR may be removed. Operate the airplane according to the procedures in Airbus A350 TR 113, Issue 1, dated August 17, 2018. In case any discrepancy is identified between procedures displayed on the electronic centralized aircraft monitoring (ECAM) and procedures stated in the applicable existing AFM, the existing AFM procedures prevail.

(1) For airplanes modified by Airbus modifications 113758 and 113760: Within 30 days after the effective date of this AD.

(2) For airplanes not identified in paragraph (g)(1) of this AD: Within 30 days after November 23, 2018 (the effective date of AD 2018–22–13).

**(h) New Requirement of This AD: Modification**

Within 6 months after the effective date of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD.

(1) Install the Airbus temporary quick change (ATQC) as specified in paragraph (h)(1)(i) or (ii) of this AD, as applicable.

(i) For airplanes with flight warning system (FWS) standard S4/2.0: Install ATQC standard V4 for FWS standard S4/2.0, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–31–P028, dated September 17, 2018.

(ii) For airplanes with FWS standard S5/2.2: Install ATQC standard V4 for FWS standard S5/2.2, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–31–P029, dated September 17, 2018. After installation of ATQC standard V4, ATQC standard V5 for FWS standard S5/2.2 may be installed, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–31–P032, dated February 28, 2019.

(2) Activate ECAM temporary change code No. 27AF, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–31–P030, dated September 17, 2018.

**(i) Other FAA AD Provisions**

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov*.

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

(ii) AMOCs approved previously for AD 2018–22–13 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0213R1, dated November 9, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0193.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

**(k) Material Incorporated by Reference**

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

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

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

(i) Airbus Service Bulletin A350–31–P028, dated September 17, 2018.

(ii) Airbus Service Bulletin A350–31–P029, dated September 17, 2018.

(iii) Airbus Service Bulletin A350–31–P030, dated September 17, 2018.

(iv) Airbus Service Bulletin A350–31–P032, dated February 28, 2019.

(v) Airbus A350 Temporary Revision (TR) 113, Issue 1, dated August 17, 2018.

(4) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com*; internet *http://www.airbus.com*.

(5) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on August 9, 2019.

**Michael Kaszycki,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–21241 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0498; Product Identifier 2019–NM–073–AD; Amendment 39–19742; AD 2019–19–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes. This AD was prompted by a report that cracks have been found within the ring gears of the slat geared rotary actuators (SGRAs) due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking. This AD requires an inspection to determine the part number and serial number of the SGRAs, and replacement of each affected SGRA with a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 5, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2019.

**ADDRESSES:** For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0498.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for

and locating Docket No. FAA–2019–0498; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

**SUPPLEMENTARY INFORMATION:**

## Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0093, dated April 26, 2019 (''EASA AD 2019–0093'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes. The NPRM published in the **Federal Register** on July 3, 2019 (84 FR 31772). The NPRM was prompted by a report that cracks have been found within the ring gears of the SGRAs due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking. The NPRM proposed to require an inspection to determine the part number and serial number of the SGRAs, and replacement of each affected SGRA with a serviceable part.

The FAA is issuing this AD to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane. See the MCAI for additional background information.

## Comments

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

## Conclusion

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

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

## Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0093 describes procedures for an inspection to determine the part number and serial number of the SGRAs, and replacement of each affected part with a serviceable part.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## Costs of Compliance

The FAA estimates that this AD affects 2 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Up to 2 work-hours × $85 per hour = Up to $170 | $0 | Up to $170 | Up to $340. |

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| Up to 15 work-hours × $85 per hour = Up to $1,275 | (*) | Up to $1,275.* |

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

## Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the

Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

## Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2019–19–06 Airbus SAS:** Amendment 39–19742; Docket No. FAA–2019–0498; Product Identifier 2019–NM–073–AD.

**(a) Effective Date**

This AD is effective November 5, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0093, dated April 26, 2019 (''EASA AD 2019–0093'').

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight control.

**(e) Reason**

This AD was prompted by a report that cracks have been found within the ring gears of the slat geared rotary actuators (SGRAs) due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking. The FAA is issuing this AD to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0093. All provisions specified in EASA AD 2019–0093 apply in this AD.

**(h) Exceptions to EASA AD 2019–0093**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0093 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0093 does not apply to this AD.

**(i) No Reporting Requirement**

Although EASA AD 2019–0093 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0093 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0093, dated April 26, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0093, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0498.

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

Issued in Des Moines, Washington, on September 19, 2019.

**Suzanne Masterson,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–21238 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2019–0550; Airspace Docket No. 19–AGL–23]**

**RIN 2120–AA66**

## Amendment of Class E Airspace; St. James, MN

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class E airspace extending upward from 700 feet above the surface at St. James Municipal Airport, St. James, MN. This action is due to an airspace review caused by the decommissioning of the Fairmont VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

**DATES:** Effective 0901 UTC, December 5, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at St. James Municipal Airport, St. James, MN, to support IFR operations at this airport.

### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 35043; July 22, 2019) for Docket No. FAA–2019–0550 to amend the Class E airspace extending upward from 700 feet above the surface at St. James Municipal Airport, St. James, MN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 7-mile radius) of the St. James Municipal Airport, St. James, MN; adds an extension 1.1 miles each side of the 147° bearing from the airport extending from the 6.4-mile radius to 10.4 miles southeast of the airport; and adds an extension 1 mile each side of the 327° bearing from the airport extending from the 6.4-mile radius to 10.2 miles northwest of the airport.

This action is necessary due to an airspace review caused by the decommissioning of the Fairmont VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

### Regulatory Notices and Analyses

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

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

**AGL MN E5 St. James, MN [Amended]**

St. James Municipal Airport, MN
(Lat. 43°59′11″ N, long. 94°33′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the St. James Municipal Airport, and within 1.1 miles each side of the 147° bearing from the airport extending from the 6.4-mile radius to 10.4 miles southeast of the airport, and within 1 mile each side of the 327° bearing from the airport extending from the 6.4-mile radius to 10.2 miles northwest of the airport.

Issued in Fort Worth, Texas, on September 23, 2019.

**Johanna Forkner,**

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

[FR Doc. 2019–21195 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2019–0267; Airspace Docket No. 18–ANM–8]**

**RIN 2120–AA66**

## Amendment of Area Navigation (RNAV) Routes Q–121 and Q–156; Miles City, MT

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the legal descriptions of area navigation (RNAV) routes Q–121 and Q–156 by changing the name of one waypoint common to each route. Specifically, this action changes the TOUGH waypoint name to SWTHN in RNAV routes Q–121 and Q–156.

**DATES:** Effective date 0901 UTC, December 5, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51 subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the legal descriptions of RNAV routes to avoid the use of similar sounding waypoint names.

### Background

RNAV routes Q–121 and Q–156 both include the waypoint TOUGH in their descriptions. Q–156 also includes a waypoint named TUFFY. Recently, with the extensive use of the routes, air traffic control facilities have identified a problem whereby TOUGH is being confused with TUFFY. To eliminate any confusion and enhance safety, the FAA is changing the TOUGH waypoint name to SWTHN in the descriptions of both Q–121 and Q–156. This action is a name change only. The geographic position of the waypoint is not changing and the current alignments of Q–121 and Q–156 are not affected.

United States Area Navigation Routes are published in paragraph 2006, of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be subsequently published in the Order.

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

### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by changing the TOUGH waypoint name in the descriptions of RNAV routes Q–121 and Q–156 to SWTHN.

Since this action involves only editorial changes to the legal descriptions of RNAV routes and does not change the dimensions or operating requirements of the affected routes, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The RNAV route modifications accomplished by this action are outlined below.

*Q–121:* Q–121 change the TOUGH waypoint name from ''TOUGH'' to ''SWTHN.''

*Q–156:* Q–156 change the TOUGH waypoint name from ''TOUGH'' to ''SWTHN.''

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when

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

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

*Paragraph 2006 United States Area Navigation Routes.*

**Q–121 PARZZ, NV to SWTHN, MT [Amended]**

| | | |
|---|---|---|
| PARZZ, NV | WP | (Lat. 41°36′14.64″ N, long. 115°02′09.69″ W) |
| Pocatello, ID (PIH) | VOR/DME | (Lat. 42°52′13.38″ N, long. 112°39′08.05″ W) |
| SWTHN, MT | WP | (Lat. 46°13′58.39″ N, long. 105°12′52.30″ W) |

**Q–156 AMDT STEVS, WA to ZZIPR, IA [Amended]**

| | | |
|---|---|---|
| STEVS, WA | WP | (Lat. 47°14′54.49″ N, long. 120°32′09.93″ W) |
| ZAXUL, WA | FIX | (Lat. 47°10′02.58″ N, long. 120°02′41.75″ W) |
| FINUT, WA | WP | (Lat. 46°44′56.48″ N, long. 117°05′19.69″ W) |
| TUFFY, MT | FIX | (Lat. 46°42′29.02″ N, long. 114°05′01.34″ W) |
| UPUGE, MT | FIX | (Lat. 46°38′04.56″ N, long. 112°10′02.39″ W) |
| HEXOL, MT | FIX | (Lat. 46°36′49.09″ N, long. 111°09′20.70″ W) |
| SWTHN, MT | WP | (Lat. 46°13′58.39″ N, long. 105°12′52.30″ W) |
| JELRO, SD | FIX | (Lat. 45°48′43.83″ N, long. 102°51′46.96″ W) |
| KEKPE, SD | WP | (Lat. 45°17′54.91″ N, long. 100°16′49.04″ W) |
| UFFDA, MN | WP | (Lat. 44°29′46.00″ N, long. 096°05′25.00″ W) |
| HSTIN, MN | WP | (Lat. 44°00′08.00″ N, long. 093°57′40.00″ W) |
| ZZIPR, IA | WP | (Lat. 43°11′09.00″ N, long. 091°39′33.00″ W) |

Issued in Washington, DC, on September 25, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–21193 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31271; Amdt. No. 3869]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 1, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 2019.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on September 6, 2019.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 10 October 2019*

Shageluk, AK, Shageluk, RNAV (GPS) RWY 16, Amdt 1
Shageluk, AK, Shageluk, RNAV (GPS) RWY 34, Amdt 1
Napa, CA, Napa County, RNAV (GPS) Z RWY 1L, Amdt 2
Colorado Springs, CO, City of Colorado Springs Muni, ILS OR LOC RWY 17L, ILS RWY 17L (SA CAT I), ILS RWY 17L (SA CAT II), Amdt 3C
Durango, CO, Durango-La Plata County, RNAV (GPS) RWY 21, Orig
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 9, Amdt 1C
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 27, Amdt 1C
Ashland, KY, Ashland Rgnl, RNAV (GPS) RWY 10, Amdt 2
Ashland, KY, Ashland Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
Plymouth, MA, Plymouth Muni, RNAV (GPS) RWY 33, Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 21L, ILS RWY 21L (SA CAT I), ILS RWY 21L (SA CAT II), Amdt 14
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Z RWY 4L (CLOSE PARALLEL), ILS PRM Z RWY 4L (CLOSE PARALLEL) (CAT II), ILS PRM Z RWY 4L (CLOSE PARALLEL) (CAT III), Orig-A
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) Z RWY 21L, Amdt 5
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (RNP) W RWY 4L, Amdt 1

Detroit, MI, Detroit Metropolitan Wayne County, RNAV (RNP) W RWY 22R, Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (RNP) X RWY 21L, Amdt 1
Plentywood, MT, Sher-Wood, RNAV (GPS) RWY 12, Orig-B
Plentywood, MT, Sher-Wood, RNAV (GPS) RWY 30, Orig-B
Minot, ND, Minot Intl, RNAV (GPS) RWY 13, Amdt 1D
Minot, ND, Minot Intl, RNAV (GPS) RWY 26, Orig-A
Minot, ND, Minot Intl, RNAV (GPS) RWY 31, Amdt 1B
Ord, NE, Evelyn Sharp Field, RNAV (GPS) RWY 13, Amdt 1
Ord, NE, Evelyn Sharp Field, RNAV (GPS) RWY 31, Amdt 1
Ord, NE, Evelyn Sharp Field, RNAV (GPS) Y RWY 31, Orig-A, CANCELLED
Lake Placid, NY, Lake Placid, RNAV (GPS) RWY 14, Amdt 1
Lake Placid, NY, Lake Placid, RNAV (GPS)-A, Amdt 2
Lake Placid, NY, Lake Placid, Takeoff Minimums and Obstacle DP, Amdt 1
Athens, TX, Athens Muni, NDB RWY 35, Amdt 4E, CANCELLED
Breckenridge, TX, Stephens County, RNAV (GPS) RWY 17, Amdt 1
Breckenridge, TX, Stephens County, RNAV (GPS) RWY 35, Amdt 1
Pullman/Moscow, WA, Pullman/Moscow Rgnl, ILS OR LOC RWY 5, Orig
Pullman/Moscow, WA, Pullman/Moscow Rgnl, RNAV (GPS) RWY 5, Amdt 3
Pullman/Moscow, WA, Pullman/Moscow Rgnl, RNAV (GPS) Y RWY 23, Amdt 2
Pullman/Moscow, WA, Pullman/Moscow Rgnl, RNAV (RNP) Z RWY 6, Orig-B, CANCELLED
Pullman/Moscow, WA, Pullman/Moscow Rgnl, RNAV (RNP) Z RWY 23, Orig
Pullman/Moscow, WA, Pullman/Moscow Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Pullman/Moscow, WA, Pullman/Moscow Rgnl, VOR RWY 5, Amdt 10

RESCINDED: On August 14, 2019 (84 FR 40234), the FAA published an Amendment in Docket No. 31265, Amdt No. 3863, to Part 97 of the Federal Aviation Regulations under sections 97.27, 97.29, 97.33 and 97.37. The following entries for Waco, TX, effective October 10, 2019, are hereby rescinded in their entirety:

Waco, TX, Heart of Texas Industrial, ILS OR LOC RWY 17L, Amdt 13C
Waco, TX, Heart of Texas Industrial, NDB RWY 35R, Amdt 12A
Waco, TX, Heart of Texas Industrial, RNAV (GPS) RWY 17L, Amdt 2
Waco, TX, Heart of Texas Industrial, RNAV (GPS) RWY 35R, Amdt 2A
Waco, TX, Heart of Texas Industrial, Takeoff Minimums and Obstacle DP, Orig-A

[FR Doc. 2019–20991 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31275; Amdt. No. 3872]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 1, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 2019.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on September 20, 2019.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31; RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 7–Nov–19 | OK | Tulsa | Tulsa Intl | 9/0624 | 9/4/19 | Takeoff Minimums and Obstacle DP, Amdt 1A. |
| 7–Nov–19 | AR | Colt | Delta Rgnl | 9/0633 | 9/4/19 | RNAV (GPS) RWY 18, Orig-A. |
| 7–Nov–19 | AR | Colt | Delta Rgnl | 9/0636 | 9/4/19 | RNAV (GPS) RWY 36, Orig-A. |
| 7–Nov–19 | WI | Clintonville | Clintonville Muni | 9/2113 | 9/4/19 | RNAV (GPS) RWY 4, Amdt 2. |
| 7–Nov–19 | WI | Clintonville | Clintonville Muni | 9/2122 | 9/4/19 | RNAV (GPS) RWY 14, Amdt 2. |
| 7–Nov–19 | WI | Clintonville | Clintonville Muni | 9/2128 | 9/4/19 | RNAV (GPS) RWY 22, Amdt 1. |
| 7–Nov–19 | WI | Clintonville | Clintonville Muni | 9/2129 | 9/4/19 | RNAV (GPS) RWY 32, Amdt 2. |
| 7–Nov–19 | CA | Tracy | Tracy Muni | 9/2664 | 9/3/19 | RNAV (GPS) RWY 30, Amdt 1A. |
| 7–Nov–19 | CA | Tracy | Tracy Muni | 9/2665 | 9/3/19 | RNAV (GPS) RWY 12, Amdt 2A. |
| 7–Nov–19 | CA | Tracy | Tracy Muni | 9/2666 | 9/3/19 | VOR RWY 26, Amdt 1. |
| 7–Nov–19 | CA | Tracy | Tracy Muni | 9/2673 | 9/3/19 | RNAV (GPS) RWY 26, Amdt 1B. |
| 7–Nov–19 | CA | Lincoln | Lincoln Rgnl/Karl Harder Field | 9/4802 | 9/17/19 | RNAV (GPS) RWY 33, Orig-A. |
| 7–Nov–19 | TX | Harlingen | Valley Intl | 9/4889 | 9/4/19 | VOR/DME RWY 17R, Orig-A. |
| 7–Nov–19 | TN | Smithville | Smithville Muni | 9/5548 | 9/17/19 | RNAV (GPS) RWY 6, Amdt 3A. |
| 7–Nov–19 | TN | Smithville | Smithville Muni | 9/5549 | 9/17/19 | RNAV (GPS) RWY 24, Amdt 3A. |
| 7–Nov–19 | TN | Portland | Portland Muni | 9/5551 | 9/17/19 | RNAV (GPS) RWY 1, Orig-A. |
| 7–Nov–19 | TN | Portland | Portland Muni | 9/5552 | 9/17/19 | RNAV (GPS) RWY 19, Orig-A. |
| 7–Nov–19 | UT | Milford | Milford Muni/Ben And Judy Briscoe Field. | 9/5554 | 9/17/19 | RNAV (GPS) RWY 16, Orig-B. |
| 7–Nov–19 | UT | Milford | Milford Muni/Ben And Judy Briscoe Field. | 9/5555 | 9/17/19 | RNAV (GPS) RWY 34, Orig-A. |
| 7–Nov–19 | UT | Delta | Delta Muni | 9/5557 | 9/17/19 | RNAV (GPS) RWY 17, Amdt 1C. |
| 7–Nov–19 | CA | Hanford | Hanford Muni | 9/5559 | 9/16/19 | RNAV (GPS) RWY 32, Amdt 2. |
| 7–Nov–19 | VA | Culpeper | Culpeper Rgnl | 9/5562 | 9/17/19 | RNAV (GPS) RWY 4, Orig. |
| 7–Nov–19 | VA | Culpeper | Culpeper Rgnl | 9/5563 | 9/17/19 | RNAV (GPS) RWY 22, Orig. |
| 7–Nov–19 | VA | Chase City | Chase City Muni | 9/5572 | 9/17/19 | RNAV (GPS) RWY 18, Amdt 1B. |
| 7–Nov–19 | VA | Chase City | Chase City Muni | 9/5574 | 9/17/19 | RNAV (GPS) RWY 36, Amdt 1A. |
| 7–Nov–19 | OR | Bend | Bend Muni | 9/5587 | 9/17/19 | RNAV (GPS) Z RWY 16, Orig-A. |
| 7–Nov–19 | OR | Bend | Bend Muni | 9/5588 | 9/17/19 | RNAV (GPS) RWY 34, Orig-A. |
| 7–Nov–19 | OR | Medford | Rogue Valley Intl—Medford | 9/5600 | 9/17/19 | RNAV (GPS) Y RWY 14, Amdt 2. |
| 7–Nov–19 | IL | Mount Carmel | Mount Carmel Muni | 9/5622 | 9/17/19 | RNAV (GPS) RWY 31, Orig. |
| 7–Nov–19 | IL | Mount Carmel | Mount Carmel Muni | 9/5627 | 9/17/19 | RNAV (GPS) RWY 4, Orig-B. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 7–Nov–19 | IL | Mount Carmel | Mount Carmel Muni | 9/5631 | 9/17/19 | RNAV (GPS) RWY 22, Orig-A. |
| 7–Nov–19 | OR | Mc Minnville | Mc Minnville Muni | 9/5634 | 9/17/19 | RNAV (GPS) RWY 4, Orig-D. |
| 7–Nov–19 | OR | Mc Minnville | Mc Minnville Muni | 9/5635 | 9/17/19 | RNAV (GPS) RWY 22, Orig. |
| 7–Nov–19 | PA | Corry | Corry-Lawrence | 9/5637 | 9/17/19 | RNAV (GPS) RWY 14, Amdt 1. |
| 7–Nov–19 | KS | Elkhart | Elkhart-Morton County | 9/5643 | 9/17/19 | RNAV (GPS) RWY 4, Amdt 1A. |
| 7–Nov–19 | KS | Elkhart | Elkhart-Morton County | 9/5644 | 9/17/19 | RNAV (GPS) RWY 17, Amdt 1A. |
| 7–Nov–19 | KS | Elkhart | Elkhart-Morton County | 9/5645 | 9/17/19 | RNAV (GPS) RWY 22, Amdt 1A. |
| 7–Nov–19 | KS | Elkhart | Elkhart-Morton County | 9/5647 | 9/17/19 | RNAV (GPS) RWY 35, Amdt 1B. |
| 7–Nov–19 | PA | Corry | Corry-Lawrence | 9/5648 | 9/17/19 | RNAV (GPS) RWY 32, Amdt 1. |
| 7–Nov–19 | PA | Danville | Danville | 9/5649 | 9/17/19 | RNAV (GPS) RWY 27, Orig-A. |
| 7–Nov–19 | PA | Ebensburg | Ebensburg | 9/5651 | 9/17/19 | RNAV (GPS) RWY 7, Orig-B. |
| 7–Nov–19 | PA | Ebensburg | Ebensburg | 9/5652 | 9/17/19 | RNAV (GPS) RWY 25, Orig-D. |
| 7–Nov–19 | PA | Lehighton | Jake Arner Memorial | 9/5654 | 9/17/19 | RNAV (GPS) RWY 8, Amdt 1C. |
| 7–Nov–19 | RI | Providence | Theodore Francis Green State | 9/5656 | 9/17/19 | RNAV (GPS) RWY 16, Orig-E. |
| 7–Nov–19 | SC | Pelion | Lexington County | 9/5657 | 9/17/19 | RNAV (GPS) RWY 18, Orig-B. |
| 7–Nov–19 | SC | Pelion | Lexington County | 9/5658 | 9/17/19 | RNAV (GPS) RWY 36, Orig-B. |
| 7–Nov–19 | SD | Sturgis | Sturgis Muni | 9/5674 | 9/17/19 | RNAV (GPS) RWY 11, Amdt 1B. |
| 7–Nov–19 | SD | Sturgis | Sturgis Muni | 9/5678 | 9/17/19 | RNAV (GPS) RWY 29, Amdt 1B. |
| 7–Nov–19 | NE | Hartington | Hartington Muni/Bud Becker Fld. | 9/5679 | 9/17/19 | RNAV (GPS) RWY 13, Orig-B. |
| 7–Nov–19 | NE | Hartington | Hartington Muni/Bud Becker Fld. | 9/5680 | 9/17/19 | RNAV (GPS) RWY 31, Orig-C. |
| 7–Nov–19 | NE | Harvard | Harvard State | 9/5689 | 9/17/19 | RNAV (GPS) RWY 17, Orig-C. |
| 7–Nov–19 | NE | Harvard | Harvard State | 9/5691 | 9/17/19 | RNAV (GPS) RWY 35, Amdt 1B. |
| 7–Nov–19 | UT | Bryce Canyon | Bryce Canyon | 9/5703 | 9/17/19 | RNAV (GPS) RWY 21, Amdt 1B. |
| 7–Nov–19 | UT | Bryce Canyon | Bryce Canyon | 9/5711 | 9/17/19 | RNAV (GPS) RWY 3, Orig-D. |
| 7–Nov–19 | VA | Norfolk | Chesapeake Rgnl | 9/5713 | 9/17/19 | RNAV (GPS) RWY 23, Orig-A. |
| 7–Nov–19 | CT | Windsor Locks | Bradley Intl | 9/5714 | 9/17/19 | ILS OR LOC RWY 6, Amdt 38. |
| 7–Nov–19 | VA | Danville | Danville Rgnl | 9/5717 | 9/17/19 | RNAV (GPS) RWY 20, Orig-B. |
| 7–Nov–19 | VA | Danville | Danville Rgnl | 9/5718 | 9/17/19 | RNAV (GPS) RWY 31, Orig-B. |
| 7–Nov–19 | CT | Groton (New London). | Groton-New London | 9/5720 | 9/17/19 | RNAV (GPS) RWY 33, Orig-B. |
| 7–Nov–19 | IA | Cedar Rapids | The Eastern Iowa | 9/5721 | 9/17/19 | RNAV (GPS) RWY 31, Amdt 1B. |
| 7–Nov–19 | IA | Cedar Rapids | The Eastern Iowa | 9/5722 | 9/17/19 | RNAV (GPS) RWY 13, Amdt 1C. |
| 7–Nov–19 | IA | Cedar Rapids | The Eastern Iowa | 9/5723 | 9/17/19 | ILS OR LOC RWY 9, Amdt 18D. |
| 7–Nov–19 | OK | Durant | Durant Rgnl—Eaker Field | 9/5759 | 9/17/19 | RNAV (GPS) RWY 17, Amdt 1. |
| 7–Nov–19 | OK | Durant | Durant Rgnl—Eaker Field | 9/5760 | 9/17/19 | RNAV (GPS) RWY 35, Amdt 1. |
| 7–Nov–19 | IA | Algona | Algona Muni | 9/5773 | 9/17/19 | RNAV (GPS) RWY 12, Orig-D. |
| 7–Nov–19 | IA | Algona | Algona Muni | 9/5774 | 9/17/19 | RNAV (GPS) RWY 30, Amdt 1C. |
| 7–Nov–19 | WY | Douglas | Converse County | 9/5785 | 9/17/19 | RNAV (GPS) RWY 11, Orig. |
| 7–Nov–19 | NY | Millbrook | Sky Acres | 9/5810 | 9/17/19 | RNAV (GPS) RWY 17, Amdt 2A. |
| 7–Nov–19 | NY | Millbrook | Sky Acres | 9/5811 | 9/17/19 | RNAV (GPS) RWY 35, Amdt 1. |
| 7–Nov–19 | OH | Medina | Medina Muni | 9/5813 | 9/17/19 | RNAV (GPS) RWY 9, Orig-C. |
| 7–Nov–19 | OH | Medina | Medina Muni | 9/5822 | 9/17/19 | RNAV (GPS) RWY 27, Orig-B. |
| 7–Nov–19 | OH | Youngstown | Youngstown Elser Metro | 9/5830 | 9/17/19 | RNAV (GPS) RWY 10, Orig-C. |
| 7–Nov–19 | OH | Youngstown | Youngstown Elser Metro | 9/5831 | 9/17/19 | RNAV (GPS) RWY 28, Orig-C. |
| 7–Nov–19 | OH | Mount Vernon | Knox County | 9/5838 | 9/17/19 | RNAV (GPS) RWY 10, Amdt 1A. |
| 7–Nov–19 | OH | Mount Vernon | Knox County | 9/5839 | 9/17/19 | RNAV (GPS) RWY 28, Amdt 1C. |
| 7–Nov–19 | OH | Cadiz | Harrison County | 9/5860 | 9/17/19 | RNAV (GPS) RWY 13, Orig-B. |
| 7–Nov–19 | OH | Cadiz | Harrison County | 9/5861 | 9/17/19 | RNAV (GPS) RWY 31, Orig-B. |
| 7–Nov–19 | OH | Wapakoneta | Neil Armstrong | 9/5866 | 9/17/19 | RNAV (GPS) RWY 8, Orig-B. |
| 7–Nov–19 | OH | Wapakoneta | Neil Armstrong | 9/5867 | 9/17/19 | RNAV (GPS) RWY 26, Orig-A. |
| 7–Nov–19 | GA | Cochran | Cochran | 9/5905 | 9/17/19 | RNAV (GPS) RWY 11, Amdt 1A. |
| 7–Nov–19 | GA | Cochran | Cochran | 9/5907 | 9/17/19 | RNAV (GPS) RWY 29, Amdt 1B. |
| 7–Nov–19 | VT | Burlington | Burlington Intl | 9/5922 | 9/17/19 | RNAV (GPS) Z RWY 33, Orig-A. |
| 7–Nov–19 | WY | Evanston | Evanston-Uinta County Burns Field. | 9/6128 | 9/17/19 | RNAV (GPS) RWY 5, Amdt 2. |
| 7–Nov–19 | TX | Palacios | Palacios Muni | 9/7585 | 9/16/19 | RNAV (GPS) RWY 13, Orig-B. |
| 7–Nov–19 | TX | Palacios | Palacios Muni | 9/7586 | 9/16/19 | VOR RWY 13, Amdt 10E. |
| 7–Nov–19 | MA | Bedford | Laurence G Hanscom Fld | 9/8734 | 9/17/19 | RNAV (GPS) RWY 23, Orig-C. |
| 7–Nov–19 | MA | Bedford | Laurence G Hanscom Fld | 9/8738 | 9/17/19 | ILS OR LOC RWY 29, Amdt 9. |

[FR Doc. 2019–20988 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 31272; Amdt. No. 3870]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 1, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 2019.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on September 6, 2019.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 10–Oct–19 | OR | Salem | McNary Fld | 9/9182 | 7/31/19 | This NOTAM, published in TL 19–21, is hereby rescinded in its entirety. |
| 10–Oct–19 | TX | Houston | George Bush Intercontinental/ Houston. | 9/0713 | 8/30/19 | ILS OR LOC RWY 8R, Amdt 26. |
| 10–Oct–19 | PA | Myerstown | Deck | 9/1907 | 8/28/19 | RNAV (GPS) RWY 19, Orig-B. |
| 10–Oct–19 | PA | Myerstown | Deck | 9/1909 | 8/28/19 | VOR/DME OR GPS–A, Amdt 1C. |
| 10–Oct–19 | GA | Atlanta | Hartsfield—Jackson Atlanta Intl. | 9/4413 | 8/26/19 | ILS OR LOC RWY 9L, Amdt 10A. |
| 10–Oct–19 | GA | Atlanta | Hartsfield—Jackson Atlanta Intl. | 9/4414 | 8/26/19 | ILS OR LOC RWY 27R, Amdt 6. |
| 10–Oct–19 | GA | Atlanta | Hartsfield—Jackson Atlanta Intl. | 9/4415 | 8/26/19 | ILS OR LOC RWY 26L, Amdt 21. |
| 10–Oct–19 | MI | Bay City | James Clements Muni | 9/5273 | 8/27/19 | Takeoff Minimums and Obstacle DP, Amdt 6A. |
| 10–Oct–19 | OR | Salem | McNary Fld | 9/7199 | 8/28/19 | RNAV (GPS) RWY 31, Amdt 3B. |
| 10–Oct–19 | AZ | Fort Huachuca Sierra Vista. | Sierra Vista Muni-Libby AAF | 9/8990 | 8/30/19 | RADAR 2 AMDT, Orig-A. |

[FR Doc. 2019–20987 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31274; Amdt. No. 3871]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions areneeded because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 1, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 2019.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–09M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA

form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on September 20, 2019.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 7 November 2019*

Le Roy, NY, Le Roy, RNAV (GPS) RWY 10, Orig-D

Le Roy, NY, Le Roy, RNAV (GPS) RWY 28, Orig-E

**Effective 5 December 2019**

Nelson Lagoon, AK, Nelson Lagoon, BINAL TWO Graphic DP

Nelson Lagoon, AK, Nelson Lagoon, RNAV (GPS) RWY 8, Amdt 1

Nelson Lagoon, AK, Nelson Lagoon, RNAV (GPS) RWY 26, Amdt 1

Nelson Lagoon, AK, Nelson Lagoon, Takeoff Minimums and Obstacle DP, Amdt 1

Fort Payne, AL, Isbell Field, NDB–A, Amdt 1A, CANCELLED

Russellville, AR, Russellville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2

Ontario, CA, Ontario Intl, RNAV (RNP) Z RWY 26L, Amdt 2

Ontario, CA, Ontario Intl, RNAV (RNP) Z RWY 26R, Amdt 2

Meriden, CT, Meriden Markham Muni, RNAV (GPS) RWY 36, Orig-E

Williston, FL, Williston Muni, VOR RWY 23, Amdt 1B, CANCELLED

Alma, GA, Bacon County, RNAV (GPS) RWY 16, Amdt 3

Alma, GA, Bacon County, RNAV (GPS) RWY 34, Amdt 2

Alma, GA, Bacon County, Takeoff Minimums and Obstacle DP, Orig-B

Atlanta, GA, DeKalb-Peachtree, VOR/DME–D, Amdt 1A, CANCELLED

Cartersville, GA, Cartersville, LOC RWY 19, Amdt 3B, CANCELLED

LaGrange, GA, LaGrange-Callaway, ILS OR LOC RWY 31, Amdt 3

LaGrange, GA, LaGrange-Callaway, RNAV (GPS) RWY 3, Amdt 1

LaGrange, GA, LaGrange-Callaway, RNAV (GPS) RWY 13, Amdt 1

LaGrange, GA, LaGrange-Callaway, RNAV (GPS) RWY 31, Amdt 1

LaGrange, GA, LaGrange-Callaway, VOR RWY 13, Amdt 16A, CANCELLED

Ames, IA, Ames Muni, ILS OR LOC RWY 1, Amdt 3A

Mattoon/Charleston, IL, Coles County Memorial, RNAV (GPS) RWY 29, Amdt 1B

South Bend, IN, South Bend Intl, ILS OR LOC RWY 9R, Amdt 10A

Atwood, KS, Atwood-Rawlins County City-County, Takeoff Minimums and Obstacle DP, Orig-A

Garden City, KS, Garden City Rgnl, ILS OR LOC RWY 35, Amdt 2

Garden City, KS, Garden City Rgnl, RNAV (GPS) RWY 12, Orig-A

Garden City, KS, Garden City Rgnl, RNAV (GPS) RWY 17, Orig-A

Garden City, KS, Garden City Rgnl, RNAV (GPS) RWY 30, Orig-A

Garden City, KS, Garden City Rgnl, RNAV (GPS) RWY 35, Orig-A

Garden City, KS, Garden City Rgnl, VOR RWY 35, Amdt 2A

Pratt, KS, Pratt Rgnl, NDB RWY 17, Amdt 5A, CANCELLED

St Francis, KS, Cheyenne County Muni, RNAV (GPS) RWY 14, Orig-A

Frederick, MD, Frederick Muni, ILS OR LOC RWY 23, Amdt 6

Howell, MI, Livingston County Spencer J Hardy, ILS OR LOC RWY 13, Amdt 1B

Howell, MI, Livingston County Spencer J Hardy, RNAV (GPS) RWY 13, Amdt 2B

Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 34, Orig-B

Cook, MN, Cook Muni, RNAV (GPS) RWY 13, Orig-D
Cook, MN, Cook Muni, RNAV (GPS) RWY 31, Amdt 1D
Ely, MN, Ely Muni, VOR/DME RWY 12, Amdt 5, CANCELLED
Roseau, MN, Roseau Muni/Rudy Billberg Field, RNAV (GPS) RWY 16, Orig-A
Two Harbors, MN, Richard B Helgeson, RNAV (GPS) RWY 6, Orig-C
Winona, MN, Winona Muni-Max Conrad Fld, ILS Z OR LOC Z RWY 30, Orig-B
Lamar, MO, Lamar Muni, RNAV (GPS) RWY 3, Amdt 1B
Lamar, MO, Lamar Muni, RNAV (GPS) RWY 17, Orig-B
Warrensburg, MO, Skyhaven, VOR–A, Amdt 3A
Kalispell, MT, Glacier Park Intl, ILS OR LOC RWY 2, Amdt 8
Engelhard, NC, Hyde County, RNAV (GPS) RWY 11, Orig-A
Williston, ND, Sloulin Field Intl, Takeoff Minimums and Obstacle DP, Amdt 6, CANCELLED
Ogallala, NE, Searle Field, VOR RWY 26, Amdt 1D
Manchester, NH, Manchester, ILS OR LOC RWY 35, ILS RWY 35 (SA CAT I), ILS RWY 35 (CAT II), ILS RWY 35 (CAT III), Amdt 4A
Hobbs, NM, Lea County Rgnl, VOR OR TACAN RWY 21, Amdt 9D
Akron, OH, Akron-Canton Rgnl, RADAR 1, Amdt 24, CANCELLED
Cadiz, OH, Harrison County, VOR–A, Amdt 1A, CANCELLED
Caldwell, OH, Noble County, VOR–A, Amdt 1B, CANCELLED
Cambridge, OH, Cambridge Muni, VOR–A, Amdt 4A, CANCELLED
Columbus, OH, Bolton Field, ILS OR LOC RWY 4, Amdt 5B
Mansfield, OH, Mansfield Lahm Regional, RADAR 1, Amdt 4A, CANCELLED
Woodsfield, OH, Monroe County, RNAV (GPS) RWY 25, Orig-C
Ada, OK, Ada Rgnl, VOR RWY 18, Amdt 2, CANCELLED
Durant, OK, Durant Rgnl—Eaker Field, RNAV (GPS) RWY 17, Amdt 2
Durant, OK, Durant Rgnl—Eaker Field, RNAV (GPS) RWY 35, Amdt 2
Durant, OK, Durant Rgnl—Eaker Field, Takeoff Minimums and Obstacle DP, Amdt 1
Durant, OK, Durant Rgnl—Eaker Field, VOR RWY 35, Amdt 1
Fairview, OK, Fairview Muni, RNAV (GPS) RWY 17, Amdt 1A
Hugo, OK, Stan Stamper Muni, RNAV (GPS) RWY 17, Amdt 1A
McAlester, OK, McAlester Rgnl, RNAV (GPS) RWY 20, Amdt 1A
McAlester, OK, McAlester Rgnl, VOR RWY 20, Amdt 2H, CANCELLED
Oklahoma City, OK, Will Rogers World, RNAV (GPS) Y RWY 17R, Amdt 5A
Pryor, OK, Mid-America Industrial, RNAV (GPS) RWY 36, Orig-A
Stigler, OK, Stigler Rgnl, RNAV (GPS) RWY 35, Amdt 1D
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, ILS OR LOC RWY 26, Amdt 25C
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, RNAV (GPS) RWY 8, Amdt 1
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, RNAV (GPS) RWY 26, Orig-D
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, Takeoff Minimums and Obstacle DP, Amdt 5
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, VOR RWY 8, Amdt 15B
Grove City, PA, Grove City, Takeoff Minimums and Obstacle DP, Amdt 4A
Grove City, PA, Grove City, VOR–A, Amdt 7A
York, PA, York, RNAV (GPS) RWY 17, Amdt 2D
York, PA, York, RNAV (GPS) RWY 35, Amdt 1D
Andrews, SC, Robert F Swinnie, NDB RWY 36, Orig-B
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 27, ILS RWY 27 (SA CAT I), ILS RWY 27 (CAT II), ILS RWY 27 (CAT III), Amdt 11B
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 7, Amdt 1B, CANCELLED
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 25, Amdt 2A, CANCELLED
Richmond, VA, Richmond Intl, VOR RWY 25, Amdt 16B, CANCELLED
Pasco, WA, Tri-Cities, ILS OR LOC RWY 21R, Amdt 13B
Pasco, WA, Tri-Cities, RNAV (GPS) Y RWY 30, Amdt 3A
Pasco, WA, Tri-Cities, VOR RWY 21R, Amdt 7A
Pasco, WA, Tri-Cities, VOR RWY 30, Amdt 5B
Amery, WI, Amery Muni, RNAV (GPS) RWY 18, Amdt 1B
Amery, WI, Amery Muni, RNAV (GPS) RWY 36, Amdt 1B
Janesville, WI, Southern Wisconsin Rgnl, RNAV (GPS) RWY 14, Amdt 1A
Janesville, WI, Southern Wisconsin Rgnl, RNAV (GPS) RWY 32, Orig-B
Mosinee, WI, Central Wisconsin, RNAV (GPS) RWY 17, Amdt 1C
Neillsville, WI, Neillsville Muni, NDB RWY 28, Amdt 7B, CANCELLED
Siren, WI, Burnett County, VOR RWY 5, Amdt 3, CANCELLED
Tomahawk, WI, Tomahawk Rgnl, RNAV (GPS) RWY 9, Amdt 2D
Wisconsin Rapids, WI, Alexander Field South Wood County, RNAV (GPS) RWY 20, Amdt 2A
Fairmont, WV, Fairmont Muni-Frankman Field, RNAV (GPS) RWY 23, Amdt 2
Fairmont, WV, Fairmont Muni-Frankman Field, VOR–A, Amdt 2

[FR Doc. 2019–20989 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### 31 CFR Parts 1010

### Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties; Correction

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** On March 19, 2018, FinCEN published a final rule to make the 2018 annual adjustment to its civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). The final rule adjusted CMPs within the jurisdiction of FinCEN to the maximum amount required by the Act for 2018. However, that final rule inadvertently used the 2017 annual adjustment penalty assessment dates in the penalty adjustment table, as opposed to using the 2018 annual adjustment penalty assessment dates. This document corrects the penalty assessment dates in the penalty adjustment table for the 2018 annual adjustment.

**DATES:** Effective October 1, 2019, and applicable beginning March 19, 2018.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Resource Center at (800) 767–2825 or email *frc@fincen.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Act requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The Act requires agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and the opportunity for public comment required by 5 U.S.C. 553. The Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.[1]

The 2018 annual adjustment for FinCEN's regulations was published March 19, 2018 (83 FR 11876). That document inadvertently used the 2017 annual adjustment dates in the headings of columns 4 and 5 of the penalty table.

### List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

[1] However, the increased CMPs apply only with respect to underlying violations occurring after the date of enactment of the Act, *i.e.,* after November 2, 2015.

**Authority and Issuance**

For the reasons set forth in the preamble, Part 1010 of Chapter X of title 31 of the Code of Federal Regulations is amended as follows:

## PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701. Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.821, amend paragraph (b) by revising the column headings to table 1 to § 1010.821 to read as follows:

**§ 1010.821 Penalty adjustment and table.**

* * * * *

(b) * * *

TABLE 1 OF § 1010.821—PENALTY ADJUSTMENT TABLE

| U.S. Code citation | Civil monetary penalty description | Penalties as last amended by statute | New maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed after 1/15/2017 but before 3/19/2018 |
|---|---|---|---|
| * * * | * * * | * * * | * * * |

* * * * *

**Jamal El-Hindi,**

*Deputy Director, Financial Crimes Enforcement Network.*

[FR Doc. 2019–21156 Filed 9–30–19; 8:45 am]

BILLING CODE 4810–02–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 316

**[Docket ID: DOD–2019–OS–0047]**

**RIN 0790–AK62**

### Defense Information Systems Agency Privacy Program

**AGENCY:** Defense Information Systems Agency, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the Department of Defense (DoD) regulation concerning the Defense Information Systems Agency (DISA) Privacy Program. On April 11, 2019, DoD published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide Privacy Program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, part 316 is now unnecessary and may be removed from the CFR.

**DATES:** This rule is effective on October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Weathers-Jenkins, 301–225–8158.

**SUPPLEMENTARY INFORMATION:** DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The DISA Privacy Act Program regulation at 32 CFR part 316, last updated on February 20, 1992 (57 FR 6074), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since because it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that DISA internal guidance concerning the implementation of the Privacy Act within DISA is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply.

**List of Subjects in 32 CFR Part 316**

Privacy.

## PART 316—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 316 is removed.

Dated: September 23, 2019.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–20909 Filed 9–30–19; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### 32 CFR Part 887

**[Docket ID: USAF–2019–HQ–0004]**

**RIN 0701–AA90**

### Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the Department of the Air Force's regulation regarding the process for replacing lost or destroyed separation documentation. Since the publication of this rule, the National Archives and Records Administration (NARA) has assumed control of the records concerned and the document release process. The content of this part is now addressed in a NARA regulation. Therefore, this part is unnecessary and may be removed from the CFR.

**DATES:** This rule is effective on October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Maj Amanda J. Pelkowski, 318–484–6294.

**SUPPLEMENTARY INFORMATION:** This final rule removes 32 CFR part 887, ''Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation,'' which was codified on January 14, 1988 (53 FR 876), and never updated. It has been determined that publication of this

CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing content which is covered in the NARA regulation at 36 CFR part 1233, ''Transfer, Use, and Disposition of Records in a NARA Federal Records Center,'' codified on October 2, 2009 (74 FR 51014), and most recently updated on March 30, 2018 (83 FR 13655). Part 1233 outlines the requirement to fill out a Standard Form 180, ''Request Pertaining to Military Records.'' NARA's regulation also directs military veterans and their next of kin to its website, which outlines procedures for requesting copies of military records held by the Services as well as NARA (Source: *http://www.archives.gov/veterans/evetrecs*).

To the extent that internal Air Force procedures concerning military records are necessary, it will continue to be published in Air Force Instruction 36–2608, ''Military Personnel Records System,'' which was updated on October 26, 2015, and is available at *http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2608/afi36-2608.pdf.*

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply.

**List of Subjects in 32 CFR Part 887**

Archives and records, Military personnel.

## PART 887—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 887 is removed.

**Adriane Paris,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2019–21172 Filed 9–30–19; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2019–0584]**

## Special Local Regulation; Clearwater Super Boat National Championship, Gulf of Mexico; Clearwater Beach, FL

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce special local regulations for the Clearwater Super Boat National Championship on September 29, 2019, to provide for the safety of life on navigable waterways during this event. Our regulation for Clearwater Super Boat National Championship identifies the regulated area for this event in Clearwater Beach, FL. During the enforcement period, no persons or vessels will be permitted in the Race Area without permission of the Captain of the Port St. Petersburg (COTP), unless they are authorized race participants. If permission is granted by the COTP, all persons and vessels receiving such permission must comply with the instructions of the COTP or a designated representative. Also during the enforcement period all vessels in the Spectator Area are to be anchored or operating at a ''no wake speed''.

**DATES:** The regulations in 33 CFR 100.721 will be enforced from 11:30 a.m. until 4 p.m. on September 29, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Marine Science Technician First Class Michael Shackleford, Sector St. Petersburg Prevention Department, U.S. Coast Guard; telephone (813) 228–2191, email *Michael.D.Shackleford@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce special local regulations in 33 CFR 100.721 for the Clearwater Super Boat National Championship regulated area from 11:30 a.m. to 4 p.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 the Clearwater Super Boat National Championship, § 100.721, specifies the location of the regulated area for the event which encompasses portions of the Gulf of Mexico. During the enforcement period only authorized race participants will be permitted to enter, transit through, anchor in, or remain in the Race Area. If you are an authorized operator of a vessel in the Race Area you must comply with the instructions of the Captain of the Port or a designated representative. On-scene designated representatives will direct spectator vessels to the Spectator Area and are to be anchored or operating at a ''no wake speed'' during the enforcement period. Persons or vessels wishing to obtain authorization to enter or remain within the regulated areas may contact the COTP by telephone at (727) 824–7506 or a designated representative via VHF radio on channel 16.

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

Dated: September 16, 2019.

**Matthew A. Thompson,**

*Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.*

[FR Doc. 2019–20981 Filed 9–27–19; 11:15 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[USCG–2019–0818]**

**RIN 1625–AA00**

## Safety Zone; San Jacinto River, Channelview, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I–10 bridge, just abreast of Buoy #14. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage and over-water bridge repairs. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Houston-Galveston.

**DATES:** This rule is effective without actual notice from October 1, 2019 through December 24, 2019. For the purposes of enforcement, actual notice will be used from September 25, 2019, through October 1, 2019. Comments and related material must be received before October 31, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0818 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG–2019–0818 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comment'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. To view documents mentioned in this

preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0818 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 Sarah Rousseau, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 281–464–4736, email *Sarah.K.Rousseau@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

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

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with salvage and over-water bridge repairs of the I–10 bridge.

## 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 Houston-Galveston (COTP) has determined that potential hazards associated with salvage and over-water bridge repairs that began on September 19, 2019, are a safety concern for vessel traffic transiting the navigable waterway of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I–10 bridge, just abreast of Buoy #14. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from potential hazardous from salvage and over-water bridge repairs.

## IV. Discussion of the Rule

This rule establishes a safety zone from September 25, 2019, through December 24, 2019. The safety zone will cover the navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I–10 bridge, just abreast of Buoy #14. The duration of the zone is intended to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from potential hazardous from salvage and over-water bridge repairs. 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-day of the safety zone. This rule will impact a small designated area of the San Jacinto River in order to support salvage and over-water bridge repairs from September 25, 2019 through December 24, 2019. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channels 13 and 16 about the zone, and the rule would allow 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 call or email 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 call or email 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 that will prohibit entry to the navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I–10 bridge, just abreast of Buoy #14, without prior approval from Coast Guard Sector Houston-Galveston COTP. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

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

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

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

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

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

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

■ 2. Add § 165.T08–0818 to read as follows:

**§ 165.T08–0818 Safety Zone; San Jacinto River, Channelview, TX.**

(a) *Location.* The following area is a safety zone: The navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I–10 bridge, just abreast of Buoy #14, in Channelview, TX in approximate location 29°47′33.5″ N, 095°03′41.2″ W.

(b) *Enforcement period.* This section will be enforced from September 25, 2019, through December 24, 2019, or until all hazardous conditions associated with salvage and over-water bridge repairs have been mitigated.

(c) *Regulations.* (1) Transit of the safety zone is open to limited traffic with the following restrictions:

(i) Only light boats and single barge tows may transit.

(ii) Transit only during daylight hours (sunrise to sunset).

(iii) There shall be no meeting or overtaking.

(iv) All vessels must check in and out with Vessel Traffic Service Houston/Galveston at least 15 minutes prior to entering the safety zone.

(2) Persons and vessels desiring to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 13 or 16 VHF–FM, or by telephone at (281) 464–4837.

(3) Permission to transit through the bridge will be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

(4) Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Houston/Galveston on channels 13 or 16 VHF–FM or by telephone at (281) 464–4837.

(d) *Informational broadcasts.* The Coast Guard will inform the public through public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: September 25, 2019.

**Richard E. Howes,**

*Captain, U.S. Coast Guard, Acting Captain of the Port Sector Houston-Galveston.*

[FR Doc. 2019–21277 Filed 9–30–19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Parts 1 and 42

**[Docket No.: PTO–P–2017–0034]**

**RIN 0651–AD25**

## Eliminating Unnecessary Regulations

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) hereby amends the Rules of Practice in Patent Cases and Trial Practice Before the Patent Trial and Appeal Board (PTAB) by removing provisions in the Code of Federal Regulations that are no longer necessary. This final rule removes the rules governing reservation clauses, petitions from the refusal of a primary examiner to admit an amendment, the publication of amendments to the regulations, and limits that the Director can impose on the number of *inter partes* reviews and

post-grant reviews heard by the PTAB. USPTO has evaluated existing regulations to identify those that should be repealed, replaced, or modified because they are outdated, unnecessary, ineffective, costly, or unduly burdensome to both government and private-sector operations. USPTO carried out this work, in part, through its participation in the Regulatory Reform Task Force (Task Force), which the Department of Commerce (Department or Commerce) established in accordance with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' Removal of the regulations identified in this final rule achieves the objective of making USPTO regulations more effective and more streamlined, while enabling the USPTO to fulfill its mission goals.

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

**FOR FURTHER INFORMATION CONTACT:** Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, by email at *raul.tamayo@uspto.gov,* or by telephone at (571) 272–7728, for questions regarding the changes to 37 CFR 1.79 and/or 1.127; Scott C. Weidenfeller, Vice Chief Administrative Patent Judge, Patent Trial and Appeal Board, by email at *scott.weidenfeller@uspto.gov,* or by telephone at (571) 272–8723, for questions regarding the changes to 37 CFR part 42; and Nicolas Oettinger, Senior Counsel for Regulatory and Legislative Affairs, Office of the General Counsel, by email at *nicolas.oettinger@uspto.gov,* or by telephone at (571) 272–7832, for questions regarding the change to 37 CFR 1.351 and general questions regarding regulatory reform.

**SUPPLEMENTARY INFORMATION:**

## I. Background

To support its regulatory reform efforts as a participant in the Task Force, the USPTO assembled a Working Group on Regulatory Reform (Working Group), consisting of subject-matter experts from each of the business units that implement the USPTO's regulations, to consider, review, and recommend ways that the regulations could be improved, revised, and streamlined. In considering the revisions, the USPTO, through its Working Group, incorporated into its analyses all presidential directives relating to regulatory reform. The Working Group reviewed existing regulations, both discretionary rules and those required by statute or judicial order. The USPTO also solicited comments from stakeholders through a web page established to provide information on the USPTO's regulatory reform efforts and through the Department's **Federal Register** Notice titled ''Impact of Federal Regulations on Domestic Manufacturing'' (82 FR 12786, Mar. 7, 2017), which addressed the impact of regulatory burdens on domestic manufacturing. These efforts led to the development of candidate regulations for removal, based on the USPTO's assessment that these regulations were not needed and/or that elimination could improve the USPTO's body of regulations. This rule removes certain patent- and PTAB-related regulations in 37 CFR part 1 and part 42. As described below, USPTO also considered comments received on the proposed rule, which was published on January 19, 2018 (83 FR 2159). This final rule makes no changes to the repeals included in the proposed rule. Other rules removing regulations on other subject areas have been published separately.

## II. Regulations Being Removed

This rule removes the regulations concerning reservation clauses, petitions from the refusal of a primary examiner to admit an amendment, and publication of amendments to the regulations in 37 CFR part 1. The rule also removes the regulations concerning limits that the Director can impose on the number of *inter partes* reviews and post-grant reviews in 37 CFR part 42.

In particular, this rule removes 37 CFR 1.79. Section 1.79 prohibits reservation clauses, *i.e.,* it prohibits a pending patent application from containing a reservation for a future patent application of subject matter disclosed but not claimed in the pending application. An applicant's ability to claim benefit of a prior application is affirmatively provided elsewhere in statute and regulation, and the explicit prohibition of § 1.79 on reservation clauses (which do not confer this benefit) dates from a time when the mechanism for properly claiming benefit of a prior application was less clear and less fully developed in USPTO's regulations and guidance. The removal of § 1.79 is not an endorsement of reservation clauses nor an invitation for applicants to include reservation clauses in applications. The Office does not expect the use of reservation clauses to significantly increase, because such reservation clauses provide no legal benefit, regardless of § 1.79. For example, the inclusion of a reservation clause in a pending application would not change any of the requirements for a future application to benefit from the earlier filing date of the pending application. The authority for the future application to benefit from the earlier filing date of the pending application would stem, as it does now, from the fulfillment of requirements set forth in statutory and regulatory provisions in which a reservation clause plays no role, *e.g.,* 35 U.S.C. 120 and 37 CFR 1.78. Nor would the inclusion of a reservation clause protect against rejections for statutory or nonstatutory double patenting. In view of the fact that the inclusion of a reservation clause provides no legal benefit, and given that the affirmative ability to claim benefit of a prior application is more fully and completely described elsewhere in USPTO's regulations and guidance (unlike when § 1.79 was first adopted), the prohibition of reservation clauses in § 1.79 is unnecessary.

Section 1.79 also permits a patent application disclosing unclaimed subject matter to contain a reference to a later-filed application of the same applicant or owned by a common assignee disclosing and claiming that subject matter. This provision of § 1.79 is duplicative and therefore unnecessary. Section 1.78 provides for cross-references to other applications, including cross-references to applications for which a benefit is not claimed, which encompasses the later-filed applications identified in § 1.79. Thus, applicants will continue to be able to include in a pending application a reference to a later-filed application as currently provided for in § 1.79.

This rule removes § 1.127, which also is duplicative. Section 1.127 indicates that a petition to the Director under 37 CFR 1.181 may be filed upon a refusal by a primary examiner to admit an amendment, in whole or in part. Section 1.127 is unnecessary. The language of § 1.181(a)(1) makes clear that any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding, which is not subject to appeal to the PTAB or to a court, is petitionable to the Director. A refusal by a primary examiner to admit an amendment constitutes an action or requirement of an examiner and is not subject to appeal to the PTAB or to a court. Thus, applicants will continue to be able to petition to the Director under § 1.181 the refusal by a primary examiner to admit an amendment, in whole or in part.

This rule additionally removes 37 CFR 1.351. Section 1.351 states that all amendments to the regulations in 37 CFR part 1 will be published in the *Official Gazette* and in the **Federal Register**. Section 1.351 is unnecessary. In accordance with the requirements of the Administrative Procedure Act (APA) and guidance from the Office of

Management and Budget (OMB), the Office publishes any amendments to 37 CFR part 1 in the **Federal Register**. The APA generally requires the Office to give public notice of any regulatory change, and OMB's guidance with respect to rulemaking makes clear that publication in the **Federal Register** is the required means for giving public notice. Given that publication in the *Official Gazette* is entirely duplicative of publication in the **Federal Register**, the Office no longer intends to make these duplicate publications of amendments to regulations in the *Official Gazette.*

Finally, this rule removes 37 CFR 42.102(b) and 42.202(b), both of which are now out of date. Section 42.102(b) provides that the Director may impose a limit on the number of *inter partes* reviews that may be instituted during each of the first four one-year periods that the Leahy-Smith America Invents Act (AIA) is in effect. Section 42.202(b) has a similar provision for post-grant reviews. Neither rule remains necessary because the fourth anniversary of the effective date of the AIA has passed.

Removal of the regulations identified in this rule achieves the objective of making the USPTO regulations more effective and more streamlined, while enabling the USPTO to fulfill its mission goals. The USPTO's economic analysis shows that while the removal of these regulations is not expected to substantially reduce the burden on the impacted community, the regulations are nonetheless being eliminated because they are ''outdated, unnecessary, or ineffective'' regulations encompassed by the directives in Executive Order 13777.

## III. Proposed Rule: Comments and Responses

The USPTO published a proposed rule on January 19, 2018, at 83 FR 2759, soliciting comments on the proposed amendments. In response, the USPTO received eight comments relevant to the proposed rule from five commenters. None of the comments expresses disapproval for the proposed amendments. Four of the comments propose additional rules for revision or removal. The comments are addressed below.

Two comments propose revising or removing 37 CFR 1.83(a). According to these comments, § 1.83(a), which states that ''[t]he drawing in a nonprovisional application must show every feature of the invention specified in the claims,'' is inconsistent with 35 U.S.C. 113, which states that ''[t]he applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented.'' The Office has considered the comments concerning § 1.83(a) but is not revising or removing the regulation. Consistent with 35 U.S.C. 113, Office regulations already limit the requirement to furnish a drawing to cases where the drawing is necessary for the understanding of the subject matter sought to be patented. *See* 37 CFR 1.81(a). Section 1.83(a) merely adds that when a drawing is required in accordance with 35 U.S.C. 113 and § 1.81(a), the drawing must show every feature of the invention specified in the claims. Moreover, § 1.83(a) permits conventional features, a detailed illustration of which is not essential for a proper understanding of the invention, to be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (*e.g.,* a labeled rectangular box). Thus, § 1.83(a) strikes a balance between maintaining a high level of quality for prior art (drawings in accordance with § 1.83 improve the understanding of the claimed subject matter in pre-grant publications and issued patents) and mitigating the drawing burden on applicants.

Two comments propose revising or removing the requirement for a certified copy of the foreign application to be filed when making a claim for foreign priority under 37 CFR 1.55. One of the two comments proposes removing each instance of ''certified'' from § 1.55, such that § 1.55 instead would require only a copy of the foreign application. The other comment proposes allowing applicants to submit certified copies of foreign applications electronically through the Office's Electronic Filing System (EFS-Web), or in the alternative, eliminating the requirement for a certified copy.

The Office has considered the comments concerning § 1.55 but is not revising or removing the requirement for a certified copy of the foreign application to be filed when making a claim for foreign priority. A critical reason for the requirement under § 1.55 to provide a certified copy of a foreign patent application is that the foreign priority date could be a prior art date under 35 U.S.C. 102(a)(2). Without the requirement, the examiner and any member of the public interested in evaluating a 35 U.S.C. 102(a)(2) prior art date would be burdened with obtaining an actual certified copy of the priority document to do a complete analysis. This burden would be particularly acute for an examiner or member of the public seeking a certified copy from a jurisdiction with poor record-keeping practices.

Furthermore, the Office continues to make progress on alleviating applicants' burden of providing a certified copy under § 1.55 through its electronic priority document exchange (PDX) program. The PDX program facilitates compliance with the certified copy requirement under § 1.55 through two modes of exchange with participating foreign offices: Direct bilateral exchange and exchange via the World Intellectual Property Organization (WIPO) Digital Access Service (DAS) for Priority Documents. As of December 1, 2018, the Office electronically retrieves certified copies of foreign applications filed with 18 WIPO DAS depositing offices. For more information on the PDX program, visit *https://www.uspto.gov/patents-getting-started/international-protection/electronic-priority-document-exchange-pdx.* For instances in which the certified copy required by § 1.55 must be obtained from a jurisdiction not currently participating in the PDX program, the burden of providing the certified copy is mitigated by 37 CFR 1.55(j). Section 1.55(j) provides for an ''interim copy'' procedure that gives an applicant more time to obtain and file the actual certified copy.

One comment proposes revising the requirement for an assignee to establish its right to take action under 37 CFR 3.73(c) so that it no longer applies ''to the original applicants named in patent applications subject to the AIA.'' The Office has considered the comment concerning § 3.73(c) but is not revising the regulation. The language of § 3.73(c)(1) already excludes an assignee who is the original applicant from the purview of § 3.73(c) (''In order to request or take action in a patent matter, an assignee who is not the original applicant must establish its ownership of the patent property of paragraph (a) of this section to the satisfaction of the Director.''). As stated in § 3.73(a), ''[t]he original applicant is presumed to be the owner of an application for an original patent, and any patent that may issue therefrom.''

One comment identifies a number of initiatives undertaken by the Office, including the Collaborative Search Pilot Program, the Cooperative Patent Classification system, Global Dossier, and the Patent Prosecution Highway. The comment states that as a result of the initiatives, the requirement under 37 CFR 1.98(a)(2) for an applicant to provide the Office copies of foreign patent documents is unnecessarily burdensome where the documents have been cited in the prosecution of another application, including an international application, for which the applicant has notified the Office. The comment

proposes either removing § 1.98(a)(2) or revising § 1.98(d) so that it would not be necessary to provide a copy of any patent, publication, pending U.S. application or other information, if the patent, publication, pending U.S. application or other information was previously submitted to, or cited by, the Office in another application, including later-filed or co-filed U.S. or international applications and applications not relied on for an earlier effective filing date under 35 U.S.C. 120, and the other application has been properly identified in an information disclosure statement (IDS).

The Office has considered the comment concerning § 1.98(a)(2) and (d) but is not removing § 1.98(a)(2) or revising § 1.98(d). The relevant initiatives that the Office currently is undertaking, including relevant initiatives identified by the comment, are not sufficient to permit removing § 1.98(a)(2) or revising § 1.98(d) in the proposed manner. The Office, however, continues to make progress on reducing applicants' burden in connection with the duty of disclosure. As of November 1, 2018, the Office has implemented the first phase of the Access to Relevant Prior Art Initiative (RPA Initiative). *See Access to Relevant Prior Art Initiative,* 83 FR 53853 (Oct. 25, 2018). The RPA Initiative leverages electronic resources to improve examiners' access to relevant information from applicants' other related applications. In the first phase, the Office is importing the citations listed on forms PTO/SB/08 (or equivalents) and PTO–892 in the immediate parent application into the continuing application. The first phase consists of a targeted release of a newly developed interface to a subgroup of examiners from a limited number of selected art units. In subsequent phases of the RPA Initiative, the Office will consider providing examiners access to citation information from other sources such as other related U.S. applications, international applications under the PCT, and counterpart foreign applications of the same applicant. The selection of these sources and the timetable for expansion will be dictated, at least in part, by evaluating the first phase, including feedback on the RPA Initiative from the public and examiners. In addition, the USPTO plans to include more examiners in subsequent phases when the RPA Initiative proves scalable.

One comment notes that 37 CFR 1.53(f)(3)(ii) requires applicants to file an oath or declaration in compliance with 37 CFR 1.63, or a substitute statement in compliance with 37 CFR 1.64, no later than the date on which the issue fee for the patent is paid. The comment proposes revising § 1.53(f)(3)(ii) to provide a time period to correct a defective oath, declaration, or substitute statement submitted no later than the date on which the issue fee for the patent is paid, but found defective after the date at which the issue fee is paid. The Office has considered the comment concerning § 1.53(f)(3)(ii) but is not revising the regulation. The requested revision is precluded by statute. Specifically, 35 U.S.C. 115(f) states that ''[t]he applicant for patent shall provide each required oath or declaration under subsection (a), substitute statement under subsection (d), or recorded assignment meeting the requirements of subsection (e) no later than the date on which the issue fee for the patent is paid.''

One comment generally supports the proposed amendments as meeting the stated objectives. The USPTO appreciates this input.

All of the comments are posted on the USPTO's website at *https://www.uspto.gov/patent/laws-and-regulations/comments-public/comments-changes-eliminate-unnecessary-regulations.*

## IV. Discussion of Rules Changes

*Part 1*

Section 1.79: Section 1.79 is removed and reserved.

Section 1.127: Section 1.127 is removed and reserved.

Section 1.351: Section 1.351 is removed and reserved.

*Part 42*

Section 42.102(b): Section 42.102(b) is removed and reserved.

Section 42.202(b): Section 42.202(b) is removed and reserved.

## Rulemaking Considerations

*A. Administrative Procedure Act:* The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

*B. Regulatory Flexibility Act:* For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This rule removes the provisions at 37 CFR 1.79, concerning the prohibition of reservation clauses, § 1.127, concerning petitions from refusal to admit amendment, and § 1.351, concerning the publication of amendments to rules. These regulations are removed because they are not necessary. This rule also removes 37 CFR 42.102(b) and 42.202(b), which provide that the Director may impose a limit on the number of *inter partes* reviews and post-grant reviews that may be instituted during each of the first four one-year periods that the AIA is in effect. These regulations are no longer necessary because the fourth anniversary of the effective date of the AIA has passed.

Removing these regulations achieves the objective of making the USPTO regulations more effective and more streamlined, while enabling the USPTO to fulfill its mission goals. The removal of these regulations is not expected to substantively impact parties. Parties either will continue to be able to take the same action under a different regulatory provision, or the rights or obligations of the parties will not change in any way. For these reasons, this rulemaking will not have a significant economic impact on a substantial number of small entities.

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs):* This rule is a deregulatory action under Executive Order 13771 (Jan. 30, 2017).

*F. Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*G. Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

*H. Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

*I. Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*J. Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*K. Executive Order 12630 (Taking of Private Property):* This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*L. Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

*M. Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

*N. National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

*O. National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

*P. Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking does not involve an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 42*

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons stated in the preamble, the Office amends parts 1 and 42 of title 37 as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

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

**Authority:** 35 U.S.C. 2(b)(2).

### § 1.79 [Removed and Reserved]

■ 2. Section 1.79 is removed and reserved.

### § 1.127 [Removed and Reserved]

■ 3. Section 1.127 is removed and reserved.

### § 1.351 [Removed and Reserved]

■ 4. Section 1.351 is removed and reserved and the undesignated center heading above it, ''Amendment of Rules,'' is removed.

## PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

**Authority:** 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

### § 42.102 [Amended]

■ 6. Amend section 42.102 by removing and reserving paragraph (b).

### § 42.202 [Amended]

■ 7. Section 42.202 is amended by removing and reserving paragraph (b).

Dated: September 19, 2019.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2019–20908 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–16–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Stamped Mail

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to revise the previously adopted provision for stamped mail weighing more than 13 ounces and extend that provision to physical characteristics.

**DATES:** *Effective:* October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** L'Tisha Slagle at (202) 268–6271, or Garry Rodriguez at (202) 268–7281.

**SUPPLEMENTARY INFORMATION:** The Postal Service published a final rule on October 9, 2009, (74 FR 52147–52148) announcing restrictions on the mailing of pieces weighing over 13 ounces bearing only postage stamps as the postage payment method.

To enhance the safety and security of Postal Service employees and customers, the Postal Service is now updating the Aviation Security Program, also known as the Anonymous Mail Program, to restrict the method of deposit for all mailpieces bearing stamps as the only postage payment method that weigh more than 10 ounces or that measure more than one half inch in thickness. Under the revised standards set forth below, domestic and international mailpieces that weigh more than 10 ounces or measure more than one half inch in thickness and bear only postage stamps as the postage payment method, may not be deposited into collection receptacles, including street, lobby, and apartment boxes, or other unattended locations. These stamped mailpieces also may not be picked up by a city, rural, or highway contract letter carrier for delivery, or through Pickup on Demand® service. Instead, mailpieces that bear only stamps as the postage payment method and that weigh more than 10 ounces or measure more than one half inch in thickness, must be presented by the sender at a Post Office® location.

For most consumers and businesses, there should be little impact. These restrictions do not apply to any mailpiece that weighs 10 ounces or less and measures one half inch or less in thickness, nor do they affect any mailpieces, regardless of weight or thickness, for which postage is paid with a method other than stamps, such as a postage evidencing system (meter or PC Postage®) or a permit imprint. Customers also will retain the opportunity to obtain a full range of mailing services at their local post offices. In view of these factors, and because of the need to act expeditiously to protect the safety and security of the public, customers, postal employees, and the mail, the Postal Service has determined that the notice and public comment procedure on this change would be impracticable and inconsistent with the public interest, and that this change should take effect as quickly as possible.

In addition, the Postal Service will update *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), *Hazardous, Restricted, and Perishable Mail,* Publication 52, and applicable *Quick Service Guides* (QSGs) under separate cover.

For the above reasons, the Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1. We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is amended as follows:

### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

## PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

### *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)

### 100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

### 110 Priority Mail Express

* * * * *

### 116 Deposit

### 1.0 Priority Mail Express 1-Day and 2-Day Delivery

Retail Priority Mail Express must be deposited as follows:

* * * * *

*[Revise the text of item a to read as follows:]*

a. Except as provided in 1.0b, items may be deposited at a Post Office location, deposited in a Priority Mail Express collection box, picked up during the normal delivery and collection of mail, or through Pickup on Demand service.

*[Revise the first sentence of item b to read as follows:]*

b. Items bearing only postage stamps as postage payment and that weigh more than 10 ounces, or measure more than ½-inch in thickness, may not be deposited into a Priority Mail Express collection box, picked up during the normal delivery and collection of mail, or through Pickup on Demand service.

* * *

* * * * *

### 120 Priority Mail

* * * * *

### 126 Deposit

### 1.0 Deposit

*[Revise the heading and first sentence of 1.1 to read as follows:]*

### 1.1 Pieces Weighing 10 Ounces or Less and One Half Inch in or Less in Thickness

Priority Mail pieces that weigh 10 ounces or less and measure ½-inch or less in thickness, may be deposited into any collection box, mail chute, or mail receptacle or at any place where mail is

accepted if the full required postage is paid with postage stamps. * * *

*[Revise the heading and first sentence of 1.2 to read as follows:]*

**1.2 Pieces Weighing More Than 10 Ounces or More Than One Half Inch in Thickness**

Priority Mail pieces bearing only postage stamps as postage payment and that weigh more than 10 ounces or measure more than ½-inch in thickness, may not be deposited into a collection box, Postal Service lobby drop, Postal Service dock, customer mailbox, or other unattended location. * * *

* * * * *

**130 Retail Mail First-Class Mail and First-Class Package Service—Retail**

* * * * *

**136 Deposit**

**1.0 Deposit for First-Class Mail and First-Class Package Service—Retail**

*[Revise the text of 1.0 to read as follows:]*

Retail First-Class Mail (letters, cards, flats) and First-Class Package Service—Retail items must be deposited as follows:

a. Except as provided in 1.0b, items may be deposited into any collection box, mail receptacle, or at any place where mail is accepted if the full required postage is paid with postage stamps.

b. Items bearing only postage stamps as postage payment and that weigh more than 10 ounces, or measure more than ½-inch in thickness, may not be deposited into any collection box, picked up during the normal delivery and collection of mail, or through Pickup on Demand service. The sender must present such items to an employee at a Post Office location. Improperly presented items will be returned to the sender for proper deposit.

* * * * *

**150 Retail Mail USPS Retail Ground**

* * * * *

**156 Deposit**

**1.0 Deposit for USPS Retail Ground**

* * * * *

*[Revise the heading and first sentence of 1.3 to read as follows:]*

**1.3 Stamped Pieces Over 10 Ounces or More Than One Half Inch in Thickness**

USPS Retail Ground pieces bearing only postage stamps as postage payment and that weigh more than 10 ounces, or measure more than ½-inch in thickness, may not be deposited into a collection box, Postal Service lobby drop, Postal Service dock, customer mailbox, or other unattended location. * * *

* * * * *

**170 Retail Mail Media Mail and Library Mail**

* * * * *

**176 Deposit and Entry**

**1.0 Deposit for Media Mail and Library Mail**

* * * * *

*[Revise the heading and first sentence of 1.2 to read as follows:]*

**1.2 Stamped Pieces Over 10 Ounces or More Than One Half Inch in Thickness**

Media Mail and Library Mail pieces bearing only postage stamps as postage payment and that weigh more than 10 ounces, or measure more than ½-inch in thickness, may not receive pickup service nor be deposited into a collection box, Postal Service lobby drop, Postal Service dock, customer mailbox, or other unattended location. * * *

* * * * *

**500 Additional Services**

* * * * *

**507 Mailer Services**

* * * * *

**7.0 Pickup on Demand Service**

* * * * *

**7.2 Basic Standards**

* * * * *

*[Revise the heading and text of 7.2.2 to read as follows:]*

**7.2.2 Stamped Pieces Over 10 Ounces or More Than One Half Inch in Thickness**

Mailpieces bearing only postage stamps as postage payment and that weigh more than 10 ounces, or measure more than ½-inch in thickness, cannot be picked up by letter carriers and must be presented to an employee at a retail service counter at a Post Office location.

* * * * *

**700 Special Standards**

**703 Nonprofit USPS Marketing Mail and Other Unique Eligibility**

* * * * *

**2.0 Overseas Military and Diplomatic Post Office Mail**

* * * * *

**2.6 Priority Mail Express Military Service (PMEMS)**

* * * * *

**2.6.9 Deposit**

PMEMS must be deposited as follows:

* * * * *

*[Revise the text of item a to read as follows:]*

a. Except as provided in 2.6.9b, items may be deposited at a Post Office location, deposited in a Priority Mail Express collection box, picked up during the normal delivery and collection of mail, or picked up by Pickup on Demand service.

*[Revise the first sentence of item b to read as follows:]*

b. Items bearing only postage stamps as postage payment and that weigh more than 10 ounces, or measure more than ½-inch in thickness, may not be deposited into a Priority Mail Express collection box, picked up during the normal delivery and collection of mail, or through Pickup on Demand service. * * *

* * * * *

**Ruth B. Stevenson,**

*Attorney, Federal Compliance.*

[FR Doc. 2019–20950 Filed 9–30–19; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2018–0800; FRL–10000–47–Region 4]**

## Air Plan Approval; KY; Jefferson County Existing and New VOC Storage Vessels Rule Changes

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), through a letter dated March 15, 2018. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County) and make minor ministerial amendments to applicability dates and standards for both existing and new storage vessels for volatile organic compounds (VOC). EPA is finalizing approval of the changes because they are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule is effective October 31, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0800. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

EPA is taking final action to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through a letter dated March 15, 2018.[1] Specifically, EPA is finalizing approval of these SIP revisions that make changes to Jefferson County Regulation 6.13, *Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds,* and Regulation 7.12, *Standard of Performance for New Storage Vessels for Volatile Organic Compounds.*[2] The SIP revisions update the current SIP-approved versions of Regulation 6.13 (Version 6) and Regulation 7.12 (Version 6) to Version 7 of each. The changes to Jefferson County Regulations 6.13 and 7.12 are administrative in nature and will better align the two regulations, reconciling their respective applicability based on the date of a facility's construction, modification, or reconstruction.

In a notice of proposed rulemaking (NPRM) published on June 5, 2019 (84 FR 26030), EPA proposed to approve the aforementioned changes to Regulations 6.13 and 7.12 in the Jefferson County portion of the Kentucky SIP, which address the control of emissions from existing and new VOC storage vessels, respectively. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before July 5, 2019.

## II. Response to Comments

EPA received two comments from one commenter on its June 5, 2019, NPRM. These comments are provided in the docket for this final action. EPA has summarized and responded to the comments below.

*Comment 1:* The commenter notes the change of applicability dates in Regulation 6.13 and states that the Jefferson County regulations are based on Federal New Source Performance Standards (NSPS), Subpart K. ''However, Subpart K only applies to vessels constructed, reconstructed, or modified after June 11, 1973 and prior to May 19, 1978,'' states the commenter. The commenter also states that ''Jefferson County's regulations seem to require more stringent standards'' and suggests that EPA ''confirm through formal notification from Kentucky and Jefferson County that they are allowed to impose more stringent standards than those by the federal government.''

*Response 1:* The change of applicability dates in Version 7 of Regulation 6.13 was made to eliminate an overlap that existed with respect to the applicability dates of Regulations 6.13 and 7.12. Under the previous versions of Regulations 6.13 and 7.12, facilities constructed, reconstructed, or modified after April 19, 1972, and before September 1, 1976, were subject to both Regulation 6.13 and 7.12. This redundancy prompted the District to change the date for Regulation 6.13 so that Regulation 6.13 applies to VOC storage vessels that commenced construction, modification, or reconstruction on or before April 19, 1972.

Regulations 6.13 and 7.12 are similar to the Federal NSPS, subpart K. However, by virtue of the VOC-storage-vessel capacity and the dates identified in Section 1, *Applicability,* of Regulations 6.13 and 7.12, both Regulations cover a wider range of facilities than does subpart K. The commenter seems to suggest that the larger applicability scope of the Jefferson County regulations as compared to that of subpart K makes the Jefferson County regulations more stringent than federal requirements. Regardless of whether or not that is true, state and local agencies are allowed under federal law to adopt regulations that are more stringent than those required by the CAA, and EPA is required by the Act to approve such SIP revisions if they meet the applicable requirements of the Act, as these revisions do. *See Union Elec. Co.* v. *EPA,* 427 U.S. 246, 262–65 (1976); 42 U.S.C. 7410(k)(3).

Likewise, with respect to state and local law, Kentucky law includes a stringency restriction with respect to regulations adopted by the Cabinet,[3] but the regulations of the District are not subject to such a limitation. Indeed, Kentucky law authorizes the District, through its Air Pollution Control Board, to adopt and enforce all orders, rules, and regulations necessary or proper to accomplish the purposes of Kentucky Revised Statutes Chapter 77. *See* Ky. Rev. Stat. § 77.180. Kentucky law also provides that an air pollution control district like the District is not prohibited from adopting regulations stricter than the state statutory or regulatory provisions that would otherwise apply to sources of air pollution within a district. *See id.* at § 77.170.

*Comment 2:* The commenter states, ''Regulation 6.13 and 7.12 require sources to remain in compliance with this regulation for the rest of time unless the source changes its process to one not covered by this regulation.'' The commenter believes this is ''an attempt at codifying the 'once in, always in' policy,'' which EPA recently rescinded. The commenter states, ''EPA should not allow the county or state to include this requirement into its SIP as EPA itself has stated it is illegal under the MACT standards so therefore it must be illegal under SIP rules.''

*Response 2:* The ''once in always in'' policy addressed the classification of major sources of hazardous air pollutants (HAPs) under section 112 of the CAA. EPA issued a new memorandum on January 25, 2018, which withdrew and replaced the ''once in, always in'' policy with guidance that sources of hazardous air pollutants

[1] EPA notes that the Agency received the SIP revisions on March 23, 2018.

[2] EPA also notes that the Agency received several other revisions to the Jefferson County portion of the Kentucky SIP submitted with the same March 15, 2018, cover letter. EPA will be considering action on the remaining revisions in separate actions.

[3] Kentucky law provides that the Cabinet ''shall have the authority, power, and duty to . . . [p]reserve existing clean air resources while ensuring economic growth by issuing regulations, which shall be no more stringent than federal requirements. . . .'' Ky. Rev. Stat. § 224.10–100(26).

previously classified as ''major sources'' may be reclassified as ''area'' sources when the facility limits its potential to emit HAP below major source thresholds.[4] EPA subsequently proposed to codify that guidance. *See* 84 FR 36304 (July 26, 2019). Here, the regulations that are being incorporated into the Kentucky SIP are local VOC (*i.e.,* precursor of ozone, a criteria pollutant) regulations being approved by EPA pursuant to CAA section 110, and thus are not subject to the ''once in, always in'' policy or its more recent replacement, which apply to sources of HAPs regulated pursuant to CAA section 112.

## III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County Regulation 6.13, *Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds,* Version 7, and Regulation 7.12, *Standard of Performance for New Storage Vessels for Volatile Organic Compounds,* Version 7, both state effective January 17, 2018. These revisions are administrative in nature and will better align the two regulations, reconciling their respective applicability based on the date of a facility's construction, modification, or reconstruction, and the true vapor pressure. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

## IV. Final Action

EPA is taking final action to approve the SIP revisions that make changes to the District's Regulation 6.13 and Regulation 7.12. These SIP revisions update the current SIP-approved versions of Regulation 6.13 (Version 6) and Regulation 7.12 (Version 6) to Version 7 of each in the Jefferson County portion of the Kentucky SIP. These rule revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The changes are administrative in nature and clarify the regulations' applicability.

## V. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 17, 2019.

**Mary S. Walker,**

*Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

[4] This memorandum is available at *https://www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf.*

[5] *See* 62 FR 27968 (May 22, 1997).

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart (S)—Kentucky

■ 2. In § 52.920, in paragraph (c), table 2 is amended:

■ a. Under ''Reg 6–Standards of Performance for Existing Affected Facilities'' by revising the entry for ''6.13''; and

■ b. Under ''Reg 7–Standards of Performance for New Affected Facilities'' by revising the entry for ''7.12''.

The revisions read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

| Reg | Title/subject | EPA approval date | **Federal Register** notice | District effective date | Explanation |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| **Reg 6—Standards of Performance for Existing Affected Facilities** | | | | | |
| * | * | * | * | * | * |
| 6.13 ..... | Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds. | 10/1/2019 | [Insert **Federal Register** citation Register]. | 1/17/18 | |
| * | * | * | * | * | * |
| **Reg 7—Standards of Performance for New Affected Facilities** | | | | | |
| * | * | * | * | * | * |
| 7.12 ..... | Standard of Performance for New Storage Vessels of Volatile Organic Compounds. | 10/1/2019 | [Insert **Federal Register** citation]. | 1/17/18 | |
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[FR Doc. 2019–20842 Filed 9–30–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2015–0426; FRL–9999–11–Region 6]**

## Air Plan Approval; Arkansas; Regional Haze Five-Year Progress Report State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the Governor of Arkansas through the Arkansas Department of Environmental Quality (ADEQ) on June 2, 2015. The SIP submittal addresses requirements of the federal regulations that direct the State to submit a periodic report assessing progress toward reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the existing implementation plan.

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

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0426. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at EPA Region 6 Office, 1201 Elm Street, Dallas, TX 75270.

**FOR FURTHER INFORMATION CONTACT:** James E. Grady, EPA Region 6 Office, Regional Haze and $SO_2$ Section, 1201 Elm Street, Suite 500, Dallas TX 72570, 214–665–6745; *grady.james@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Grady or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' or ''our'' each mean ''the EPA.''

### I. Background

Each state is required to submit to the EPA an implementation plan addressing regional haze visibility impairment for the first implementation period under 40 CFR 51.308. Under 40 CFR 51.308(g),[1] each state is then required to submit a progress report that evaluates visibility progress toward the RPGs for each Class I area within the state[2] and

[1] To address the progress report requirements under 40 CFR 51.308(g), the State provided: (1) A description of the status of measures in the approved regional haze implementation plan; (2) a summary of emission reductions achieved; (3) an assessment of visibility conditions for each Class I area in the state (and for two Class I areas in Missouri); (4) an analysis tracking the changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in reducing pollutant emissions and improving visibility; (6) an assessment of whether the approved regional haze SIP elements and strategies are sufficient to enable the State (and other states with Class I areas affected by emissions from the state) to meet all established RPGs; and (7) a review of the State's visibility monitoring strategy.

[2] Arkansas has two Class I areas within its borders that are addressed in the progress report: Upper Buffalo and Caney Creek Wilderness areas. Upper Buffalo Wilderness area, located in Newton County,

each Class I area outside the state [3] which may be affected by emissions from within the state. In addition, 40 CFR 51.308(h) requires states to submit, at the same time as the progress report, a determination of adequacy of the existing regional haze implementation plan.[4] The progress report for the first planning period is due five years after submittal of the initial regional haze SIP and must take the form of a SIP revision. Arkansas submitted its regional haze SIP for the first implementation period on September 9, 2008,[5] and the EPA partially approved and partially disapproved portions of it on March 12, 2012.[6] On June 2, 2015, Arkansas submitted its progress report regarding the initial 2008 regional haze SIP to the EPA in the form of a SIP revision under 40 CFR 51.308. The EPA promulgated a FIP (the Arkansas Regional Haze FIP) on September 27, 2016 to address the disapproved portions of the 2008 Arkansas Regional Haze SIP and then approved successive SIP revisions (the 2017 Arkansas Regional Haze $NO_X$ SIP revision and the 2018 Arkansas Regional Haze $SO_2$ and PM SIP revision) [7] that replaced a portion of those FIP elements.[8]

On March 28, 2019, we published a notice of proposed rulemaking (NPRM) proposing to approve Arkansas' regional haze five-year progress report SIP, submitted by ADEQ on June 2, 2015.[9] In that document we proposed to approve Arkansas' regional haze progress report SIP since it meets the applicable regional haze requirements set forth in 40 CFR 51.308(g) and meeting the determination of adequacy provision under 40 CFR 51.308(h) for the first implementation period. We also proposed to find that the State of Arkansas fulfilled its requirement in 40 CFR 51.308(i) regarding state coordination with Federal Land Managers (FLMs). The published proposal provides a detailed description of Arkansas' progress report SIP submittal and the rationale for our proposed approval of it.

The public comment period for the proposal closed on April 29, 2019. We received two public comments concerning our proposed action. The comments are included in the publicly posted docket associated with this action at *https://www.regulations.gov.* We received an anonymous comment regarding the Mercury and Air Toxics Standards which is outside the scope of this action. We also received a comment letter dated April 29, 2019, from the Arkansas Affordable Energy Coalition (AAEC) regarding our proposal. The AAEC expressed general support for the proposed approval but also submitted a copy of the comments it previously submitted on December 31, 2018 on our proposed approval action on the August 8, 2018 Arkansas Regional Haze $SO_2$ and PM SIP revision (located in Docket No. EPA–R06–OAR–2015–0189). We have responded to those submitted comments as part of our final action on that SIP revision.[10] Our detailed responses can be found in the response-to-comment (RTC) documents for the Arkansas Regional Haze $SO_2$ and PM SIP Revision.[11] After careful consideration, we have determined that the comments received do not raise any issues specific to the progress report. We are approving the Arkansas regional haze progress report SIP submittal, as proposed.

## II. Final Action

We are approving Arkansas' regional haze progress report SIP revision (submitted on June 2, 2015) since we have found that it meets the applicable regional haze requirements set forth in 40 CFR 51.308(g) and the determination of adequacy provision under 40 CFR 51.308(h). We also find that the State of Arkansas fulfilled its requirement in 40 CFR 51.308(i) regarding state coordination with Federal Land Managers (FLMs). This action is being taken under section 110 of the Act.

## III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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

Arkansas, is an oak-hickory forest with intermittent portions of shortleaf pine located in the Ozark National Forest and offers 12,108 acres of boulder strewn and rugged scenery along the Buffalo River. Caney Creek Wilderness is located in Polk County, Arkansas, and covers 14,460 acres on the southern edge of the Ouachita National Forest and protects a rugged portion of the Ouachita Mountains.

[3] Two Class I areas outside Arkansas' borders at Hercules Glades and Mingo Wilderness areas in Missouri were found to be impacted by emissions from within Arkansas.

[4] The Regional Haze Rule requires states to provide in the progress report an assessment of whether the current ''implementation plan'' is sufficient to enable the states to meet all established RPGs under 40 CFR 51.308(g). The term ''implementation plan'' is defined for purposes of the Regional Haze Rule to mean any SIP, FIP, or Tribal Implementation Plan. As such, the Agency may consider measures in any issued FIP as well as those in a state's regional haze plan in assessing the adequacy of the ''existing implementation plan'' under 40 CFR 51.308(g) and (h).

[5] In addition to the initial September 2008 submittal, the State submitted a SIP revision on August 3, 2010, with mostly non-substantive changes that addressed Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19 Chapter 15. On September 27, 2011, the State submitted supplemental information to address the regional haze requirements. The EPA collectively refers to the original 2008 submittal and these revisions together as the 2008 Arkansas Regional Haze SIP.

[6] See the final action on March 12, 2012 (77 FR 14604).

[7] See final action approving the Arkansas Regional Haze $NO_X$ SIP revision on February 12, 2018 (83 FR 5927). The EPA's final action approving the Arkansas Regional Haze $SO_2$ and PM SIP revision was signed by the Regional Administrator on August 28, 2019 and has yet to be published.

[8] The remaining part of the FIP which addresses the BART and associated long-term strategy requirements for Domtar will be addressed in a future SIP action.

[9] See 84 FR 11697.

[10] The EPA's final action approving the Arkansas Regional Haze $SO_2$ and PM SIP revision was signed by the Regional Administrator on August 28, 2019.

[11] See ''Arkansas Regional Haze Phase II SIP Revision Response to Comments,'' in Docket ID EPA–R06–OAR–2015–0189.

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

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

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

Environmental protection, Air pollution control, Best Available Retrofit Technology, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Regional haze, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: September 23, 2019.

**Kenley McQueen,**

*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart E—Arkansas

■ 2. In § 52.170 paragraph (e), the third table titled ''EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP'' is amended by adding a new entry ''Arkansas SIP Review for the Five-Year Regional Haze Progress Report'' at the end of the table to read as follows:

**§ 52.170 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal/ effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * | * | * | * |
| Arkansas SIP Review for the Five-Year Regional Haze Progress Report. | Statewide | June 2, 2015 | October 1, 2019, [Insert **Federal Register** citation]. | |

[FR Doc. 2019–20982 Filed 9–30–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2017–0681; FRL–10000–28–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Beaver, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision is an attainment plan for the purpose of providing for attainment of the 2010 sulfur dioxide ($SO_2$) primary national ambient air quality standard (NAAQS) in the Beaver County, Pennsylvania $SO_2$ nonattainment area (hereafter referred to as the ''Beaver Area'' or ''Area''). The attainment plan includes the base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measure (RACM) requirements, a reasonable further progress (RFP) plan, a modeling demonstration of $SO_2$ attainment, enforceable emission limitations and control measures, contingency measures for the Beaver Area, and Pennsylvania's new source review (NSR) permitting program. As part of approving the attainment plan, EPA is approving into the Pennsylvania SIP new $SO_2$ emission limits and associated compliance parameters for the FirstEnergy Generation, LLC (FirstEnergy) Bruce Mansfield Power Station (Bruce Mansfield) and a consent order with Jewel Acquisition Midland steel plant (Jewel Facility). EPA is approving these revisions that demonstrate attainment of the $SO_2$ NAAQS in the Beaver Area in accordance with the requirements of the Clean Air Act (CAA).

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

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0681. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at *goold.megan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 2, 2010, the EPA Administrator signed a final rule establishing a new $SO_2$ primary NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations. See 75 FR 35520 (June 22, 2010), codified at 40 CFR 50.17. This action also provided for revocation of the existing 1971 primary annual and 24-hour standards, subject to certain conditions.[1] Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1)–(2) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations for 29 areas for the 2010 $SO_2$ NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there were sufficient data to support a nonattainment designation.[2]

Effective on October 4, 2013, the Beaver Area was designated as nonattainment for the 2010 $SO_2$ NAAQS for an area that encompasses the primary $SO_2$ emitting source Bruce Mansfield and the nearby $SO_2$ monitor (Air Quality Site ID: 42–007–0005). The final designation triggered a requirement for Pennsylvania to submit a SIP revision with an attainment plan for how the Area would attain the 2010 $SO_2$ NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA section 192(a).

For a number of areas, including the Beaver Area, EPA published a document on March 18, 2016, effective April 18, 2016, that Pennsylvania and other pertinent states had failed to submit the required $SO_2$ attainment plan by this submittal deadline. See 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, pursuant to Pennsylvania's submittal of September 29, 2017, and EPA's subsequent letter dated October 5, 2017 to Pennsylvania finding the submittal complete and noting the stopping of the sanctions clock, these sanctions under section 179(a) will not be imposed as a consequence of Pennsylvania's having missed the SIP submission deadline. Additionally, under CAA section 110(c), the March 18, 2016 finding triggered a requirement that EPA promulgate a Federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal and EPA has approved the submittal as meeting applicable requirements. This FIP obligation will not apply as a result of this action to finalize this SIP approval.

Attainment plans for $SO_2$ must meet the applicable requirements of the CAA, and specifically, CAA sections 110, 172, 191, and 192. The required components of an attainment plan submittal are listed in section 172(c) of Title I, part D of the CAA, and in EPA's implementing regulations at 40 CFR part 51. On April 23, 2014, EPA issued guidance (hereafter 2014 $SO_2$ Nonattainment Guidance) recommending how state submissions could address the statutory requirements for $SO_2$ attainment plans.[3] In this guidance, EPA described the statutory requirements for an attainment plan, which include: An accurate base year emissions inventory, of current emissions, for all sources of $SO_2$ within the nonattainment area (172(c)(3)); an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (172(c)); demonstration of RFP (172(c)(2)); implementation of RACM, including RACT (172(c)(1)); Nonattainment NSR requirements (172(c)(5)); and adequate contingency measures for the affected area (172(c)(9)).

## II. Summary of SIP Revision and EPA Analysis

In accordance with section 172(c) of the CAA, the Pennsylvania attainment plan for the Beaver Area includes: (1) An emissions inventory for $SO_2$ for the plan's base year (2011); and (2) an attainment demonstration. The formal SIP revision was submitted by Pennsylvania on September 29, 2017. The attainment demonstration includes the following: Analyses that locate, identify, and quantify sources of emissions contributing to violations of the 2010 $SO_2$ NAAQS; a determination that the control strategy for the primary $SO_2$ source within the nonattainment area constitutes RACM/RACT; a dispersion modeling analysis of an emissions control strategy for the primary $SO_2$ source (Bruce Mansfield), showing attainment of the $SO_2$ NAAQS by the October 4, 2018 attainment date; requirements for RFP toward attaining the $SO_2$ NAAQS in the Area; contingency measures; the assertion that Pennsylvania's existing SIP-approved NSR program meets the applicable requirements for $SO_2$; and the request that emission limitations and compliance parameters for Bruce Mansfield be incorporated into the SIP. On October 5, 2018 (83 FR 50314), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of the attainment plan for the Beaver Area for the 2010 $SO_2$ NAAQS. Comments on EPA's proposed rulemaking were due on or before November 5, 2018.

Other specific requirements of the Beaver Area attainment plan and the

[1] EPA's June 22, 2010, final action provided for revocation of the 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. *See* 75 FR 35520. However, the secondary 3-hour $SO_2$ standard was retained. Currently, the 24-hour and annual standards are only revoked for certain of those areas the EPA has already designated for the 2010 1-hour $SO_2$ NAAQS. See 40 CFR 50.4(e).

[2] EPA is continuing its designation efforts for the 2010 $SO_2$ NAAQS. Pursuant to a court-order entered on March 2, 2015, by the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the country on a schedule that contains three specific deadlines. *Sierra Club, et al.* v. *Environmental Protection Agency,* 13–cv–03953–SI (N.D. Cal. 2015).

[3] See ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions'' (April 23, 2014), available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

rationale for EPA's proposed action are explained in the NPRM and will not be restated here. This final action incorporates the rationale provided in the NPRM, except to the extent necessary to reflect any changes in the rationale in response to the public comments. Multiple comments on the NPRM were received from one entity. Several of the comments had various points and are addressed point by point by EPA. To review the full set of comments received, refer to the Docket for this rulemaking, as identified above. A summary of the comments received and EPA's responses are provided below.

*Comment 1.* The commenter asserts that considering FirstEnergy's announcement that the Bruce Mansfield Plant will retire in 2021, the proper path forward is for the Pennsylvania Department of Environmental Protection (PADEP) to incorporate that retirement into the SIP and set emission limits for the plant of zero.

*Response 1.* EPA disagrees with the commenter that PADEP needs to revise their SIP submission to incorporate the retirement of Bruce Mansfield. The Commonwealth of Pennsylvania correctly submitted a complete attainment plan SIP on September 29, 2017, and EPA is finalizing approval of that submittal with this action. The Beaver Area Attainment Plan includes modeling using the Bruce Mansfield critical emissions values (CEVs) and operational restrictions for other $SO_2$ sources in the area that demonstrates attainment of the 1-hour $SO_2$ NAAQS. PADEP developed comparably stringent 30-day emissions limits for Bruce Mansfield based on the modeled CEVs. The attainment plan meets the requirements of CAA Section 172(c) as submitted, and there is no need to amend the plan to incorporate the planned shutdown of Bruce Mansfield. In addition to the planned shutdown which the commenter mentioned, EPA is aware that Units 1 and 2 of the Bruce Mansfield Plant have been listed on PJM's (Pennsylvania New Jersey Maryland Interconnection LLC) deactivation list as of February 5, 2019 (which was after the public comment period for this action); nevertheless, EPA continues to assert that even though Bruce Mansfield Units 1 and 2 are already deactivated, the SIP does not need to be amended. The permits for these units have not been retired, and, thus, the units are still permitted to emit $SO_2$ to the allowable emission limit. The emission limits and operational restrictions being incorporated into the SIP in this action are still in effect, and still provide for attainment of the 1-hour $SO_2$ NAAQS, as the attainment modeling demonstrated.

*Comment 2.* The commenter claims that EPA has failed to issue a FIP or impose sanctions against the state for not having a Federally enforceable SIP that demonstrates how the Beaver Area will reach attainment by the statutorily required compliance deadline of October 4, 2018. The commenter asserts that it is unclear how the SIP can meet this now passed compliance deadline when the limits proposed in the Pennsylvania submission are not presently Federally enforceable.

*Response 2.* EPA disagrees with the commenter that sanctions should have been applied in this case because, as discussed in the NPRM, the sanctions clock was turned off when EPA determined a complete SIP was submitted as stipulated in CAA 179(a). See also 40 CFR 52.31(d)(5), which provides that a sanctions clock started by a finding of failure to submit a required SIP will be permanently stopped upon a final finding that the deficiency forming the basis of the finding of failure to submit has been corrected, and that in such a case a letter from EPA to the State would be how EPA issues a finding that the deficiency has been corrected.

EPA agrees with the commenter that the approval of this SIP did not occur before the October 4, 2018 deadline for NAAQS attainment. However, EPA disagrees that the proposed emission limits at Bruce Mansfield and operational restrictions at the Jewel Facility in the SIP, which have been in effect and enforceable at the state level since October 1, 2018, and September 21, 2017, respectively, have not brought the $SO_2$ concentrations in the area under the 75-ppb standard by the applicable deadline. Supporting evidence of timely attainment is available from the most recent $SO_2$ concentrations at the Brighton Township monitor (AQS 42–007–0005) in the nonattainment area being well below the 75-ppb standard. Specifically, the 99th percentile of the 1-hour maximum $SO_2$ concentrations at the (previously violating) Brighton Township monitor was 18 ppb in 2018, and the most recent design value (3-year average of the annual 99th percentile of 1-hour daily maximum concentrations using 2016–2018 data) was 22 ppb.[4]

EPA also disagrees with the apparent view of the commenter that because EPA did not approve, and thereby make Federally enforceable, the Commonwealth's emission limits before the October 4, 2018 attainment deadline, Pennsylvania's plan itself is somehow no longer approvable and EPA cannot thereafter approve the emissions limits and make them Federally enforceable. Such a view cannot be correct, as adopting it would preclude EPA from ever being able to approve a SIP that has fully adequate emissions limits that reduce emissions concentrations to attaining levels merely due to EPA's timing of action, rather than based on the technical merits of the SIP, and force EPA to possibly adopt in a FIP the exact same emissions limits but on an even more belated schedule. Such a result is not compelled by the CAA, and would offend the value of cooperative federalism reflected in the Act. In addition, EPA believes its obligation is to evaluate the state's plan, and to evaluate whether the state has established timely obligations for pertinent sources, without regard to the timing by which the state enforceable obligations become Federally enforceable.

In any case, EPA has proposed approval, and with this action, finalizes approval of the Beaver, PA attainment plan, which makes Federally enforceable the 30-day average $SO_2$ limits at Bruce Mansfield and operational restrictions at the Jewel Facility. The 30-day average $SO_2$ limits for Bruce Mansfield were developed using procedures recommended in EPA's 2014 $SO_2$ Nonattainment Area Guidance and are a comparably stringent substitute for a 1-hour limit at the modeled CEV. The CEV for Bruce Mansfield and the operational restrictions for the Jewel Facility were modeled as resulting in attainment of the NAAQS, Bruce Mansfield is complying with the comparably stringent 30-day limits, Jewel is complying with the operational restrictions, and the limits have been enforceable Pennsylvania since October 1, 2018 for Bruce Mansfield, and since September 21, 2017 for the Jewel Facility.

In regard to EPA's failure to issue a FIP, EPA believes that the most expeditious way to bring this area into attainment and maintain attainment is to approve the submitted SIP with the limits and restrictions adopted by the Commonwealth, making those limits and restrictions Federally enforceable. Also, any FIP for this area would likely mirror what Pennsylvania has proposed in the SIP, so approval of the SIP is likely just as effective and a more efficient way to ensure that the limits

[4] The Brighton Township monitor was the highest violating monitor in Beaver County in 2011 when the area was designated nonattainment. The 2009–2011 Design Value (3-year average of the annual 99th percentile of 1-hour daily maximum concentrations) was 158 ppb, and the 2008–2010 design value was 167 ppb.

and other elements of the SIP become Federally enforceable. Thus, it is reasonable to conclude that the most expeditious approach to having a Federally enforceable plan to bring the area into attainment and keep it in attainment is to approve this SIP, and not issue a FIP.

*Comment 3.* The commenter asserts that the 30-day average emission limits in the Proposal for Bruce Mansfield are fundamentally incapable of protecting a 1-hour standard. The commenter provided two references to EPA documents where EPA states that averaging periods for emissions limits should be consistent with the NAAQS averaging time periods.[5]

*Response 3.* EPA disagrees with the commenter's statement that the proposed 30-day limit is fundamentally incapable of protecting the 1-hour NAAQS. EPA believes as a general matter that properly set, longer term average limits are comparably effective in providing for attainment of the 1-hour $SO_2$ standard as 1-hour limits. EPA's 2014 $SO_2$ Nonattainment Area Guidance sets forth in detail the reasoning supporting its view that the distribution of emissions that can be expected in compliance with a properly set longer term average limit is likely to yield comparable overall air quality than constant hourly emissions set at a level that provides for attainment. See 2014 $SO_2$ Nonattainment Guidance, including Appendix B. This reasoning is also expressed in detail in the NPRM for this action.

At the outset, EPA notes that the specific examples of earlier EPA statements cited by the commenter (*i.e.,* those contained in Exhibits 1 and 2 to Appendix A of the comment submission) pre-date the release of EPA's 2014 $SO_2$ Nonattainment Area Guidance. As such, these examples only reflect the Agency's development of its policy for implementing the 2010 $SO_2$ NAAQS as of the dates of the issuance of the statements. At the time these statements were issued, EPA had not yet addressed the specific question of whether it might be possible to devise an emission limit with an averaging period longer than 1-hour, with appropriate adjustments that would make it comparably stringent to an emission limit shown to attain 1-hour emission levels, that could adequately ensure attainment of the $SO_2$ NAAQS. None of the pre-2014 EPA documents cited by the commenter address this question; consequently, it is not reasonable to read any of them as rejecting that possibility.

In contrast, EPA's 2014 $SO_2$ Nonattainment Area Guidance specifically addressed this issue as it pertains to requirements for SIPs for $SO_2$ nonattainment areas under the 2010 NAAQS, especially with regard to the use of appropriately set comparably stringent limitations based on averaging times as long as 30 days. EPA found that a longer term average limit which is comparably stringent to a short-term average limit is likely to yield comparable air quality; and that the net effect of allowing emissions variability over time but requiring a lower average emission level is that the resulting worst-case air quality is likely to be comparable to the worst-case air quality resulting from the corresponding higher constant short-term average emission limit. See 2014 $SO_2$ Nonattainment Guidance.

Any accounting of whether a 30-day average limit provides for attainment must consider factors reducing the likelihood of 1-hour average concentrations that exceed the NAAQS level as well as factors creating a risk of additional concentrations that exceed the NAAQS level. To facilitate this analysis, EPA used the concept of a CEV for the $SO_2$-emitting facilities which are being addressed in a nonattainment SIP. The CEV is the continuous 1-hour emission rate which is expected to result in the 3-year average of annual 99th percentile daily maximum 1-hour average concentrations being at or below 75 ppb, which in a typical year means that fewer than four days have maximum hourly ambient $SO_2$ concentrations exceeding 75 ppb. See 2014 $SO_2$ Nonattainment Guidance, Appendix B.

EPA recognizes that a 30-day limit can allow occasions in which emissions exceed the CEV, and such occasions yield the possibility of concentrations exceeding the NAAQS level that would not be expected if emissions were always at the CEV. At the same time, the establishment of the 30-day average limit at a level below the CEV means that emissions must routinely be lower than they would be required to be with a 1-hour emission limit set at the CEV. On those critical modeled days in which emissions at the CEV are expected to result in concentrations exceeding 75 ppb, emissions set to comply with a 30-day average level which is below the CEV may well result in concentrations below 75 ppb. Requiring emissions on average to be below the CEV introduces significant chances that emissions will be below the CEV on critical days, so that such a requirement creates significant chances that air quality would be better than 75 ppb on days that, with emissions at the CEV, concentrations would have exceeded 75 ppb.

The NPRM for this area provides an illustrative example of the effect that application of a limit with an averaging time longer than 1 hour can have on air quality. This example illustrates both (1) the possibility of elevated emissions (emissions above the CEV) causing concentrations exceeding the NAAQS level not expected with emissions at or below the CEV and (2) the possibility that the requirement for routinely lower emissions would result in avoiding concentrations exceeding 75 ppb that would be expected with emissions at the CEV. In this example, moving from a 1-hour limit to a 30-day average limit results in one day that exceeds 75 ppb that would otherwise be below 75 ppb, one day that is below 75 ppb that would otherwise be above 75 ppb, and one day that is below 75 ppb that would otherwise be at 75 ppb. In net, the 99th percentile of the 30-day average limit scenario is lower than that of the 1-hour limit scenario, with a design value of 67.5 ppb rather than 75 ppb. Stated more generally, this example illustrates several points: (1) The variations in emissions that are accounted for with a longer term average limit can yield higher concentrations on some days and lower concentrations on other days, as determined by the factors influencing dispersion on each day, (2) one must account for both possibilities, and (3) accounting for both effects can yield the conclusion that a properly set longer term average limit can provide as good or better air quality than allowing constant emissions at a higher level. The commenter has not disputed this rationale that longer term limits can suitably provide for attainment, and thus EPA continues to assert that appropriately set 30-day emission limits can be protective of the 1-hour $SO_2$ standard.

*Comment 3a.* The commenter states that the Bruce Mansfield 30-day average emission limits are 720 times the standard, and they would do nothing to change Bruce Mansfield's current behavior. The commenter provided data from the last four years of publicly available emissions data for the facility and notes that the proposed 30-day average emission limits for Units 1 and 2 combined, and for Unit 3, respectively, are far higher than actual historical emissions. The commenter also provided hourly emissions data from Bruce Mansfield Units 1 and 2 combined from June 1, 2013 to May 30,

[5] EPA Region 7 Comments re: Sunflower Holcomb Station Expansion Project 4 (August 12, 2010); EPA Region 5 comments re: Monroe Power Plant Construction Permit 1 (February 1, 2012).

2017[6] and states that during this time period, there are 101 hours in which emissions from Units 1 and 2 exceed the hourly limit. The commenter further asserts that using their 30-day average analysis, Bruce Mansfield would have been in ''compliance'' with the proposed 30-day emission limits during this time period. In the commenter's view, given that exceedances of the NAAQS can occur if as few as four hours over the course of a year are above the 75-ppb threshold, the commenter states that it is impossible that the proposed 30-day limit will protect the standard.

*Response 3a.* EPA disagrees with the commenter that the 30-day average emission limits are 720 times the standard. The averaging period for the emissions limit is 30 days, or 720 hours, which is 720 times the length of the averaging time of the standard. The 30-day emission limits are not 720 times the 1-hour CEV, and the resulting concentrations are not 720 times the NAAQS (75 ppb). More importantly, this comment does not include a rationale that a limit with this averaging time necessarily fails to assure attainment.

The $SO_2$ emissions and $SO_2$ concentrations have significantly declined in the Beaver Area. As described in the NPRM for this action, two facilities within the nonattainment area have permanently shut down—AES Beaver, a coal fired power plant, shut down in 2015, and Horsehead Monaca, a zinc smelter, shut down in 2014. In addition, the Jewel Facility, a steel mill, has entered into a Consent Order and Agreement (COA) with PADEP to prohibit operation of the Meltshop (the primary source of sulfur dioxide). The closure of two facilities and the operational restrictions on a third facility have provided $SO_2$ emission reductions, and a significant portion of these reductions are enforceable pursuant to Pennsylvania's plan. These reduced allowable emissions, along with the allowable emissions at Bruce Mansfield, have been modeled in accordance with Appendix W to 40 CFR part 51 and the EPA's 2014 $SO_2$ Nonattainment Area Guidance and demonstrate that the area will attain the standard by its attainment date. PADEP developed a comparably stringent 30-day average emission limit for Bruce Mansfield using the modeled emission levels as a starting point and adjusted downward, in accordance with procedures recommended in EPA's $SO_2$ Nonattainment Area Guidance. In response 3 above and in EPA's 2014 $SO_2$ Nonattainment Area Guidance, EPA has explained at length its reasoning that a comparably stringent 30-day average limit is a suitable substitute for a 1-hour limit at the CEV in providing for attainment.

Furthermore, although the focus of this rulemaking is on whether the plan has limits that assure attainment, it is worth noting that significant emission reductions have also occurred and will occur in the future at Bruce Mansfield. Compared to emissions for 2010 to 2012 (the period of the air quality data that resulted in this area being designated nonattainment), when emissions from Bruce Mansfield averaged 20,700 tons per year, emissions for 2017 to 2018 averaged 7,000 tons per year. As stated in the attainment plan, in order to comply with the new limit, Bruce Mansfield planned to make operational and physical changes prior to October 2018 to ensure compliance with the new limits (Appendix E–1, p. 7). Also, although shutdowns at Bruce Mansfield are beyond the planning horizon of the SIP and are not part of the SIP, the shutdown of this full facility that is slated for 2021 provides further confidence that the area will continue to attain the standard.

Therefore, EPA continues to believe that the emission limits at Bruce Mansfield, in concert with the shutdown of AES Beaver and Horsehead Monaca, and operating restrictions on the Jewel plant, provide the $SO_2$ emission reductions required to demonstrate attainment. EPA notes that attainment is not solely dependent on reducing emissions or changing the operations at Bruce Mansfield, but on all the $SO_2$ emission reductions that have occurred and were modeled in the nonattainment area.

Furthermore, EPA disagrees with the commenter's premise that the existence of hours with emissions exceeding modeled attainment levels despite compliance with the 30-day average limit necessarily means that the 30-day limit is not protective of the NAAQS. (The commenter claims the existence of 101 hours from mid-2013 to mid-2017 when the emissions from Units 1 and 2 exceeded the ''hourly limit'' despite being in compliance with the 30-day limit. In fact, there is no hourly limit; as discussed further below, the commenter identified an equation, based on Pennsylvania's simulations of attainment level emissions, for characterizing the range of combinations of hourly Unit 1, Unit 2, and Unit 3 emissions that would model attainment, and found that 101 hours had emissions exceeding those levels.) Indeed, the NPRM provides an extensive discussion of EPA's rationale for believing that a 30-day average limit, which creates risk of occasions of emissions exceeding the CEV but also creates a compensating likelihood that the mandate for lower average emissions will avert some of the exceedances that would be allowed with a higher 1-hour average limit, will have the net effect of assuring attainment.

However, the commenter does not address EPA's full rationale for concluding that properly set 30-day average limits are a suitable basis for providing for attainment of the 1-hour $SO_2$ standard. Instead, the commenter merely notes that there were 101 hours when the emissions from Unit 1 and 2 exceeded attainment levels (which is 0.36 percent of the operating hours that the commenter examined) but fails to address the effect of the adjusted 30-day average limit requiring emissions to be well below critical emission levels, namely avoiding some exceedances that would be expected to occur with emissions allowed always to be at the CEV. Consequently, the commenter does not acknowledge or address the occasions in which the longer term limit provides better air quality, which is a key element of EPA's rationale for concluding that the net effect of limiting longer term average emissions to a downward adjusted level can be comparably effective in providing for attainment as limiting 1-hour emissions to the level of the CEV. Because the pertinent question is whether Pennsylvania's plan provides for attainment, EPA must address the net effect of applying a long-term average, not just considering those factors that increase the likelihood of exceedances or just considering those factors that reduce the likelihood of exceedances.

At issue here is how often emissions from Bruce Mansfield, upon compliance with Pennsylvania's 30-day average limits, might be expected to have hourly emission rates above the level modeled to result in attainment. Ordinarily, a single model run establishes upper bound hourly emission rates at which the area attains the standard; EPA calls these hourly emission rates CEVs. However, in this case, Pennsylvania conducted numerous runs reflecting the combined effect of emissions from the three units (two stacks) at Bruce Mansfield. These model runs were used to determine the relationship between emissions from Stacks 1 and 2 which would result in attainment.

[6] The Appendix B spreadsheet submitted with this comment shows the data analysis for the hourly emissions at Bruce Mansfield Units 1 and 2 was for the time period June 1, 2013 through June 30, 2017. However, the text of the comment states the analysis was completed for emissions from June 1, 2013 to May 30, 2017.

Therefore, to determine the historic frequency of excess emission events, a more complicated analysis is warranted. Part of such analysis should be to establish criteria for defining excess emission events, *i.e.,* hours when emissions exceed the level demonstrated in the state's plan to provide for attainment. Ordinarily, excess emission events may be defined simply as hours when emissions exceed the CEV. However, in this case, Pennsylvania has defined attainment level emissions in significant part as an interactive function of the emissions of both stacks at Bruce Mansfield. In particular, using the results of 17 modeling runs reflecting a range of combinations of emissions from Bruce Mansfield Stack 1 and Stack 2, the Commonwealth determined an equation defining the range of combinations of 1-hour emissions that provide for attainment, as indicated in their correction email dated 6/11/18 which was included in the docket for this action, and discussed in the NPRM. The equation contains a critical value, which is the equation result (applying the equation to Stack 1 and Stack 2 emissions) that is considered to correspond to the sets of 1-hour emission rates that Pennsylvania modeled as providing attainment. EPA will call this critical value the critical formula value (CFV), and will call the analysis to determine how many exceedance events over the CFV occurred, the CFV exceedance analysis.

The commenter developed a different CFV, based on a different equation (again based on the modeled combinations of Stack 1 and Stack 2 emissions) to define the combinations of 1-hour emissions from these stacks that could be considered to yield attainment.

Finally, EPA developed a third equation (with a third CFV), again designed around a graph of the emission values that modeled attainment from Stack 1 and Stack 2.

These three equations (reflecting different order polynomials and having different CFVs) provide three different expressions of the maximum combinations of Stack 1 and Stack 2 emissions that may be considered to yield attainment, and thus provide three different means of assessing whether a particular historic combination of Stack 1 and Stack 2 emissions should be considered to be an excess emission event. These equations are presented in Pennsylvania's correction email, in the commenter's comment letter, and in EPA's technical support document (TSD) for this rulemaking, respectively.

These three approaches all yielded similar results. Pennsylvania, examining data for 2012 to 2016, found that 219 hours out of 43,848 hours, or 0.50 percent of hours, exceed Pennsylvania's CFV. (Dividing this 219 hours over the number of hours in which at least one unit is operating, 43,030 hours, suggests 0.51 percent of operating hours exceeded the CFV.) The commenter, examining data for mid-2013 to mid-2017, found that 101 hours (which, out of 28,074 operating hours, is 0.36 percent) exceeded the CFV. EPA, examining data for 2011 to 2017, found that 226 hours out of 56,503 operating hours, or 0.40 percent, constituted excess emission events, including 221 hours that exceeded the CFV and 5 hours in which Unit 3, operating alone, exceeded its CEV. Additional information regarding these three analyses are provided respectively in the submittal, the comment letter, and the TSD noted above.

These results should be put in the context of whether the baseline periods for these analyses reflected compliance with Pennsylvania's emission limits and, if not, the frequency with which the facility exceeded these limits. Pennsylvania did not assess whether Bruce Mansfield met its adopted limits. The commenter did conduct this assessment and concluded that the facility met all three limits for all 30-day average periods. However, EPA believes that the commenter analyzed these data incorrectly, using averaging procedures different from the procedures that Pennsylvania would use in assessing compliance.

The COA that Pennsylvania adopted and submitted to govern emissions from Bruce Mansfield does not precisely define the data handling procedures that it would use in assessing compliance with the pertinent limits. However, Pennsylvania states, ''The 30-operating day rolling average $SO_2$ emissions rate shall be calculated using the procedures outlined in the Mercury and Air Toxics Standards (MATS) regulations in 40 CFR parts 60 and 63.'' EPA interprets this statement to mean that compliance shall be assessed by calculating an average of the hourly emission rates applicable while the facility is operating. While the $SO_2$ limit in MATS, which regulates mass of emissions per unit heat input, has a different form from Pennsylvania's limit, which regulates mass per hour, EPA interprets Pennsylvania to intend the same feature of conducting its compliance calculations in a manner that gives no weight to periods in which the unit(s) is not operating. (While these procedures may be a moot point if Bruce Mansfield does not resume operation, EPA's evaluation of the approvability of Pennsylvania's SIP necessitates review of whether the applicable limits provide for attainment should the facility restart.)

The commenter computed 30-day averages by computing daily average emission rates (including only operating hour emission rates) and then by computing the unweighted average of these daily average values. This approach gives days with partial operation the same weight as days with 24 hours of operation, and thus overweights the hours on the partial operation days.

EPA then conducted its own evaluation of whether Bruce Mansfield was complying with the limits in Pennsylvania's SIP during the period being evaluated for excess emission events. In this evaluation, EPA examined data for 2011 to 2017.[7] During this period, EPA concluded that Bruce Mansfield was in compliance with the prospective limits for Stack 1 (Units 1 and 2) and for Stack 2 (Unit 3) at all times but exceeded the formula limit for 16 out of 2116 averaging periods, or 0.76 percent. Therefore, EPA believes that compliance with the limits in Pennsylvania's SIP will require Bruce Mansfield to have a slightly smaller fraction of hours exceeding the CFV than occurred in the historical record. EPA, Pennsylvania, and the commenter nevertheless agree that the frequency with which Bruce Mansfield could be expected to exceed the CFV (or either of the stack-specific CEVs) is less that 0.6 percent of operating hours.

However, EPA disagrees with the commenter on the air quality consequences of these occasions of elevated emissions. EPA believes that a full analysis of the air quality impact of Pennsylvania's limits must consider these hours of elevated emissions in conjunction with the far greater number of hours when emissions are required to be well below the level (on average, on the order of 20 to 30 percent below the level) that would model violations. For reasons described in more detail in EPA's guidance and in the NPRM for this action, EPA believes that the net effect of these compensating factors is that Pennsylvania's limits provide adequate assurance that the area will

[7] Consistent with the characteristics of data handling in MATS, EPA interprets Pennsylvania's limits to reflect data handling in which compliance with these mass per hour limits is assessed by dividing total mass by total operating time, thereby giving hours with fractional operating time the appropriate fractional weight. For simplicity in this analysis, EPA gave the same weight to all hours with any operation, averaging the hourly mass values regardless of what portion of the hour was operational. However, EPA expects in this case that a more precise analysis would give similar results.

attain the $SO_2$ standard. EPA notes that the data used for these analyses were from time periods prior to the adoption of 30-day emission limits, prior to the requirement of 95% scrubber control efficiency, and prior to the operational and physical changes that were made to meet the new lower emission limits. Through the adoption of these new requirements, Bruce Mansfield will restrict the variability in emissions and will need to comply with new emission limits.

After reviewing Pennsylvania's submittal, EPA finds that the limits established for Bruce Mansfield provide a suitable alternative to establishing 1-hour average emission limits for this source. Consistent with EPA guidance, EPA anticipates that, if Bruce Mansfield resumes operation and complies with Pennsylvania's limits, excess emission events will be sufficiently infrequent that compliance with the 30-day average limits will provide for attainment.

*Comment 3b.* The commenter states that EPA suggests that because Bruce Mansfield has exceeded the polynomial-based emission limits on an hourly basis only ''0.50%'' of the time during 2012–2016, that the 30-day limits are therefore adequately protective.[8] However, the commenter asserts that EPA's reliance on FirstEnergy's math is misplaced and its reasoning is incorrect. First, FirstEnergy and EPA improperly compare the exceedances not to plant operating hours, but to the number of hours in the calendar. The commenter states that FirstEnergy and EPA significantly understate the significance of those nonoperating hours because there are thousands of hours in which one or another boiler at Bruce Mansfield was not operating, and nearly a thousand hours during the examined time period in which no boiler was operating. The commenter asserts that the 219 hours that FirstEnergy concedes Bruce Mansfield exceeded the polynomial hourly attainment level emissions is significant, given the commenter's view that the NAAQS can be violated with heightened emissions in as few as four hours a year over three years. Second, FirstEnergy's analysis only looks at times in which the emissions from Units 1 and 2 together exceed the polynomial function, and not at those times when emissions from Unit 3 exceed the polynomial function. As such, the commenter states that the analysis only looks at a part of the story—there are numerous hours where emissions from Unit 3 all by itself are enough to mean that, even with their emission limits governed by the polynomial function, Units 1 and 2 would need to emit negatively. As such, the commenter asserts that FirstEnergy and EPA are arbitrarily ignoring a significant aspect of the problem.

*Response 3b.* EPA agrees with the commenter regarding mistakes in FirstEnergy's math, but disagrees with the commenter regarding its claims that a 30-day limit cannot be protective of a 1-hour standard. EPA has addressed the latter issue above in Response 3a.

Pennsylvania/FirstEnergy's CFV analysis contained two mistakes. FirstEnergy failed to only use plant operating hours in their CFV analysis. They also failed to count hours as exceeding the attainment emission level when the emissions from Unit 3 would have exceeded the limits on its own, thereby understating the number of hours in which that, if modeled as occurring constantly for every hour of the year, would be expected to estimate a violation. (The commenter describes hours with excessive emissions from Unit 3 as hours in which ''Units 1 and 2 would need to emit negatively.'' EPA agrees that these hours when Unit 3 emits above its own CEV need to be counted as excess emissions hours for purposes of this analysis, but EPA believes that the pertinent issue is whether the plant emitted excessively, not whether the limits require impossible emission levels.) EPA addressed these mistakes in its analysis. In order to determine exceedance events in respect to the CFV, EPA kept all hours where Stack 1 (unit 1 and 2) and Stack 2 had emission values. EPA included these occurrences in the analysis because the formula applies when Stack 1 and Stack 2 are in service, and therefore, the analysis to determine how many times the formula was exceeded should include any hours when emissions were coming out of both stacks. As described above, EPA's CFV exceedance analysis shows that 0.4% of operating hours during 2011 through 2017 constituted an excess emissions event.

Consequently, EPA continues to have reasonable confidence that occasions with emissions above the CFV will be infrequent and limited in magnitude. EPA's revised CFV analysis is available in the docket for this action and is described in more detail in the TSD for this action. EPA provided a full rationale for comparably stringent longer term averages in Responses 3 and 3a above, concluding that the net effect of limiting longer term average emissions to a downward adjusted level can be comparably effective in providing for attainment as limiting 1-hour emissions to the level of the CEV.

*Comment 3c.* The commenter asserts that Pennsylvania's contingency measures are limited and do not support Pennsylvania's claims that the measures will minimize further the chance of an exceedance. The commenter asserts that the contingency measures will require Bruce Mansfield to (1) audit their systems if the emissions become close to the emission limits and (2) require Bruce Mansfield to monitor their systems to ensure the facility does not cause a violation at the monitor. The commenter claims that number 1 above is what Bruce Mansfield ought to be doing anyway to ensure that they are in compliance with their permit limits, and number 2 incorrectly relies on one monitor when attainment should be reached throughout the nonattainment area.

*Response 3c.* EPA disagrees with the commenter that the contingency measures are too limited and do not support Pennsylvania's claims that the measures will minimize further the chance of an exceedance. The CAA requires a Nonattainment SIP to model attainment throughout the nonattainment area. Section 172(c)(9) of the CAA defines contingency measures as such measures in a SIP that are to be implemented in the event that an area fails to make RFP, or fails to attain the NAAQS by the applicable attainment date. Contingency measures are to become effective without further action by the state or EPA, where the area has failed to (1) achieve RFP or, (2) attain the NAAQS by the statutory attainment date for the affected area. These control measures are to consist of other available control measures that are not included in the control strategy for the attainment plan SIP for the affected area. However, EPA has also explained that $SO_2$ presents special considerations.[9] First, for some of the other criteria pollutants, the analytical tools for quantifying the relationship between reductions in precursor emissions and resulting air quality improvements remains subject to

[8] The commenter misrepresented EPA's statement. The emission limits are expressed as 30-day average limits. As such, the limits cannot be exceeded on an hourly basis. The commenter presumably meant to refer to the frequency with which the facility exceeded the attainment level hourly emission values, computed by the state's unadjusted polynomial-based formula, which is the frequency that EPA described as being 0.50 percent.

[9] See $SO_2$ Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, EPA–452/R–94–008, February 1994. See also EPA's 2014 $SO_2$ Nonattainment Guidance. See General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 at 57 FR 13498 (April 16, 1992).

significant uncertainties, in contrast with procedures for directly-emitted pollutants such as $SO_2$. Second, emission estimates and attainment analyses for other criteria pollutants can be strongly influenced by overly optimistic assumptions about control efficiency and rates of compliance for many small sources. This is not the case for $SO_2$.

In contrast, the control efficiencies for $SO_2$ control measures are well understood and are far less prone to uncertainty. Because $SO_2$ control measures are based on what is directly and quantifiably necessary to attain the $SO_2$ NAAQS, it would be unlikely for an area to implement the necessary emission controls yet fail to attain the NAAQS. See 2014 $SO_2$ Nonattainment Area Guidance, page 41. Therefore, for $SO_2$ programs, EPA has explained that contingency measures can mean that the air agency has a comprehensive program to identify sources of violations of the $SO_2$ NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of the revised SIP. EPA believes that this approach continues to be valid for the implementation of contingency measures to address the 2010 $SO_2$ NAAQS, and consequently concludes that Pennsylvania's comprehensive enforcement program, as discussed below, satisfies the contingency measure requirement.

This approach to contingency measures for $SO_2$ does not preclude an air agency from requiring additional measures that are enforceable and appropriate for a particular source category if the state determines such supplementary measures are appropriate. As EPA has stated in our 2014 $SO_2$ Nonattainment Area Guidance, in order for EPA to rely on these measures to approve the SIP, the supplementary contingency measures would need to be fully adopted provisions in the SIP that become effective where the area has failed to meet RFP or fails to attain the standard by the statutory attainment date. See 2014 $SO_2$ Nonattainment Guidance, page 42.

As noted in EPA's NPRM, EPA's 2014 $SO_2$ Nonattainment Area Guidance describes special features of $SO_2$ planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures. One effective alternative means identified by the Guidance is a comprehensive enforcement program for sources emitting $SO_2$. Pennsylvania has a comprehensive enforcement program as specified in Section 4(27) of the Pennsylvania Air Pollution Control Act (APCA), 35 P.S. § 4004(27). Under this program, PADEP is authorized to take any action it deems necessary or proper for the effective enforcement of the Act and the rules and regulations promulgated under the Act. Such actions include the issuance of orders (for example, enforcement orders and orders to take corrective action to address air pollution or the danger of air pollution from a source) and the assessment of civil penalties. Sections 9.1 and 10.1 of the APCA, 35 P.S. §§ 4009.1 and 4010.1, also expressly authorize PADEP to issue orders to aid in the enforcement of the APCA and to assess civil penalties.

Any person in violation of the APCA, the rules and regulations, any order of PADEP, or a plan approval or operating permit conditions could also be subject to criminal fines upon conviction under Section 9, 35 P.S. § 4009. Section 7.1 of the APCA, 35 P.S. § 4007.1, prohibits PADEP from issuing plan approvals and operating permits for any applicant, permittee, or a general partner, parent or subsidiary corporation of the applicant or the permittee that is placed on PADEP's Compliance Docket until the violations are corrected to the satisfaction of PADEP.

In addition to having a fully approved enforcement program, Pennsylvania has included contingency measures that are triggered when a source's emissions reach a certain percentage of the allowable emissions and based on any monitor in the nonattainment area registering a 1-hour daily maximum concentration exceeding 75 ppb. These measures are in line with the supplemental contingency measure guidance EPA mentions above and are included in the FirstEnergy COA and the Jewel COA and thus will be fully approved provisions within the SIP.

In regard to the monitoring contingency measure, the commenter erroneously confuses the requirement for Pennsylvania to plan for attainment in the entire Nonattainment area with the ability of the Commonwealth to use monitoring data from a single location as a trigger for a contingency measure. Pennsylvania has demonstrated attainment throughout the entire Beaver Nonattainment area through their modeling demonstration discussed previously. Using monitoring data to trigger supplemental contingency measures is a defensible approach for helping achieve attainment throughout the area in cases where the plan has unexpectedly not achieved attainment.

EPA concludes that Pennsylvania's enforcement program by itself suffices to satisfy the contingency measure requirements. The magnitude of prospective benefit from Pennsylvania's supplemental contingency measures is unclear, but it is clear that these measures can only improve and will not worsen air quality. Therefore, notwithstanding the commenter's concerns about the specificity and triggering of the supplementary measures identified in the Pennsylvania SIP and the FirstEnergy and Jewel COAs, EPA believes that Pennsylvania's enforcement program, which is enhanced by the supplementary provisions in the COAs, suffice to meet Section 172(c)(9) requirements as interpreted in the 1992 General Preamble and the 2014 $SO_2$ Nonattainment Guidance.

*Comment 4.* The commenter states that the conversion factors used to determine the comparably stringent longer term limit for Bruce Mansfield are arbitrary and insufficiently protective. The commenter asserts that the conversion factors are highly dependent on the time period selected. The commenter provided a table of varying time periods, and corresponding adjustment factors. The commenter notes that depending on the time period selected the adjustment factors can range from 0.558 to 0.673.

*Response 4.* EPA disagrees with the commenter's assertion that Bruce Mansfield's $SO_2$ limits are arbitrary and insufficiently protective. As stated in EPA's 2014 $SO_2$ Nonattainment Area Guidance, EPA expects that establishing an appropriate longer-term average limit will involve assessing a downward adjustment in the level of the limit that would provide for comparable stringency. This assessment should generally be conducted using data obtained by a Continuous Emissions Monitoring System (CEMS), in order to have sufficient data to obtain a robust and reliable assessment of the anticipated relationship between longer-term average emissions and 1-hour emission values. This is necessary to suitably assess the warranted degree of adjustment of the longer-term average limit in order to provide comparable stringency to the 1-hour emission rate that is determined to provide for attainment.

EPA generally expects that datasets reflecting hourly data for at least three to five years of stable operation (*i.e.,* without changes that significantly alter emissions variability) would be needed to conduct a suitably reliable analysis. PADEP's use of 2012–2016 CEM data represents five years of historic data of

stable operation for the Bruce Mansfield facility, and provides the robustness recommended in EPA's guidance.

In contrast, the commenter's adjustment factors were based on time intervals that varied from six months to three and a half years, which are all less than the time interval used by Pennsylvania. The commenter's adjustment factors resulting from using shorter time periods illustrate a point that EPA considered in formulating its guidance, which is that using an insufficient amount of data is prone to yield results that vary unduly by data period and may not be a sufficiently robust basis for determining a reliable adjustment factor. The variability in adjustment factors using time intervals from six months to three and a half years provided by the commenter demonstrates the insufficiency of these shorter time periods for use in development of such an adjustment factor, but does not demonstrate the insufficiency of the overall method in EPA's 2014 $SO_2$ Nonattainment Area Guidance had it been appropriately applied, nor does it demonstrate that Pennsylvania's adjustment factor is inappropriate.

EPA's guidance recommends calculating adjustment factors using statistics calculated according to the data handling procedures by which compliance is determined. The COA between Pennsylvania and FirstEnergy indicates that ''the 30-operating day rolling average $SO_2$ emissions rate shall be calculated using the procedures outlined in the MATS regulations in 40 CFR parts 60 and 63.'' Pennsylvania and EPA calculated adjustment factors accordingly.

Pennsylvania imposed three separate limits, and EPA considered the adjustment inherent in each limit. For the limit on Unit 3 emissions, Pennsylvania appropriately compared the 99th percentile of 30-day averages of Unit 3 emissions against the 99th percentile of 1-hour values of Unit 3 emissions, computing an adjustment factor of 0.794. The commenter does not contest this adjustment factor. EPA computed similar statistics for seven years of emissions (2011 to 2017) and computed a similar emission factor, 0.786.

For the limit on the sum of Unit 1 and Unit 2 emissions, Pennsylvania conducted separate calculations for Unit 1 and for Unit 2, computing adjustment factors of 0.59 and 0.717, respectively. The commenter objects to the use of the Unit 2 adjustment factor for both units, thereby disregarding the variability of Unit 1. EPA agrees that the variability of Unit 1 may not be disregarded, and that the variability of Unit 2 should not be used as a surrogate for the variability of both units.

However, since the limit governs the sum of emissions from both units, the more pertinent question is how much variability exists in the sum of emissions from the two units. That is, the appropriate method for computing an adjustment factor for this limit is to use statistics for the sum of emissions from the two units, comparing the 99th percentile of the 30-day average sum of emissions against the 99th percentile of the 1-hour sum of emissions. As discussed in the TSD, EPA computed an adjustment factor in this manner using 2011 to 2017 data for these units, computing a value of 0.72. This indicates that proper calculation of an adjustment factor for this limit yields a result that is very similar to the adjustment that Pennsylvania applied, resulting in a limit that may be considered comparably stringent to the 1-hour limit that Pennsylvania would otherwise have imposed.

The third limit governs the combination of emissions from all three units, in particular mandating that the value of an equation adding the sum of 30-day average emissions from Units 1 and 2 plus two terms (respectively first order and second order) based on emissions from Unit 3 shall not exceed 7,100.[10] Consequently, the most pertinent approach for assessing the effect of using 30-day emission averages in determining compliance with this limit is to apply EPA's recommended procedure to statistics calculated using the equation of Pennsylvania's limit. That is, EPA believes that the best assessment of the appropriate adjustment to the level to be mandated with this equation is to compare the 99th percentile of the values computed with this equation (as would be calculated to determine compliance with the limit) against the 99th percentile of the 1-hour values computed with this equation. Using Pennsylvania's 2012 to 2016 data, EPA in this manner computed an adjustment factor of 75.2 percent. Among the 14 model runs in which Unit 3 emissions comply with the Unit 3 emissions limit, the lowest formula result (*i.e.,* the level of the 1-hour formula limit that would yield attainment in all scenarios) is 9,821. This value multiplied by 75.2 percent yields a comparably stringent 30-day average-based value of 7,385. Since Pennsylvania has imposed a more stringent requirement for the results of this equation (*i.e.,* 7,100), EPA believes that Pennsylvania's limit is at least comparably stringent to the 1-hour-based limit that they would otherwise have imposed.

The commenter's adjustment factors are approximately 0.017 to 0.159 less than the adjustment factor calculated by PADEP, depending upon the time period selected. However, EPA's calculations, using seven years of hourly data from 2011 to 2017, and calculated in accordance with the data handling procedures that will be used in assessing compliance, provide a more robust and more pertinent assessment of the degree of adjustment needed to identify 30-day average-based limits that may be considered comparably stringent to the 1-hour limits that would otherwise have been set. This analysis resulted in an adjustment factor of 0.72 for Units 1 and 2 combined, and a formula limit value of 7,385 rather than the value of 7,100 that Pennsylvania imposed. These values are closely aligned with the adjustment factors reflected in Pennsylvania's limits, and support the limits that Pennsylvania established.

*Comment 4a.* The commenter notes that the years 2012–2016 used by PADEP in calculating the Bruce Mansfield adjustment factor are problematic. The commenter notes that the facility's dispatch has been steadily declining, that there is a trend of increased start ups and shut downs, and therefore, an increase in short term emission spikes. Specifically, the commenter claims the use of years 2012–2014 are not likely to be representative of future operation as in those years, Bruce Mansfield's operation and emissions were more consistent. The commenter asserts that future operation will be even more variable considering a 2018 fire at the scrubber system and the need to rebuild part of that system, noting that rebuilding will result in changes to scrubber operation.

*Response 4a.* EPA disagrees with the commenter that increased start-ups and shutdowns will lead to an increase in $SO_2$ emission spikes at Bruce Mansfield and disagrees with the commenter that PADEP's use of 2012–2016 emissions data was not representative of future operations (PADEP used 2012 through 2016 emissions, and the commenter's concern is with 2012–2014). EPA notes that the commenter did not provide any material supporting the claim that more start-ups and shutdowns increase $SO_2$ emissions or cause emission spikes at

[10] As noted previously, although Pennsylvania's limit is expressed as limiting the sum of Units 1 and 2 emissions to 7100 minus the value of the two terms based on Unit 3 emissions, this translation of the limit provides a more appropriate perspective from which to examine the effect of the collective variability of all three units on the stringency of the collective 30-day average limit.

Bruce Mansfield. EPA analyzed hourly emissions data for Bruce Mansfield's units from 2011 through 2017. This analysis shows that there was an increasing number of start-ups and shutdowns during this time period for Units 1, 2 and 3. However, EPA's analysis also shows that $SO_2$ emissions at these units do not spike during start-up and shutdowns. In fact, the emissions are generally lower than 100 pounds per hour (lbs/hr) during these time periods for these units. Absent any specific evidence from the commenter supporting their claim that increased start-ups and shutdowns at Bruce Mansfield will increase $SO_2$ emissions spikes, EPA does not believe that the commenter has justified its claims that Bruce Mansfield can expect to experience more emission spikes due to start-ups and shutdowns or that expected differences between operation from 2012 to 2016 and future operation warrants a lower adjustment factor.

In addition, EPA's 2014 $SO_2$ Nonattainment Guidance recommends using emissions data that reflect the distribution of emissions that is expected once the attainment plan is implemented. PADEP was correct to assume that the Bruce Mansfield Facility (if it resumes full operation) would continue to operate with a similar distribution of emissions as it did during 2012 through 2016, since the attainment plan was not requiring any new control technology. $SO_2$ emissions from each of the three boilers were already controlled by three individual Flue Gas Desulfurization (FGD) systems. Unit 1 and Unit 2 each vent through two flues within a common stack. Unit 3 vents through two flues in the other stack. Through the COA, PADEP required Bruce Mansfield FGD units to achieve at least a 95% removal efficiency. The recent fire at the scrubber system which was identified as an issue by the commenter does not remove the requirement to achieve at least a 95% removal efficiency from the FGD units, and to meet the emission limits outlined in the COA. As such, the control technology after the implementation of the attainment plan remains the same as the control technology prior to the development of the attainment plan, and therefore EPA reasonably believes that emissions variability during the historic period of 2012–2016 continues to be representative regardless of any rebuilding of the FGD system (if that does need to occur as the commenter asserts).

EPA notes that Bruce Mansfield Units 1 and 2 have been listed on the PJM deactivation list as of February 2019. Therefore, EPA anticipates not that these units will start up and shut down more often but instead that these units will not resume operation and will not start up or shut down at all. However, EPA's task here is to assess whether Pennsylvania's plan provides for attainment, including in the scenario that these units resume operation. In this scenario, EPA presumes that satisfaction of emission limits will reflect full repair of emission control systems and the resumption of normal, stable operations, which may resume the trend toward more startups and shutdowns but which can be expected to have a distribution of upper level emissions that is similar to the distribution seen in 2012 to 2016. Thus, the deactivation of these units does not impact the approval of this attainment plan. The emission limits for the three units at Bruce Mansfield are still in effect.

*Comment 4b.* The commenter asserts that Pennsylvania's use of Unit 2's adjustment factor (0.717) for Unit 1 was incorrect and by using this higher adjustment factor, the 30-day emission limit calculated is significantly higher than the one that would be calculated using Unit 1's adjustment factor. The commenter asserts that EPA incorrectly determined that it was appropriate to use Unit 2's adjustment factor for Unit 1, because Unit 2's hourly emissions tend to be higher more frequently than those of Unit 1. The commenter asserts that during the time period 2012–2016, Unit 2's emissions were actually lower than Unit 1's for nearly 5,000 hours. Thus, the commenter claims EPA's own logic actually supports using the 0.59 conversion factor for Unit 1, not the 0.717 ratio.

The commenter continues that neither EPA nor Pennsylvania provides any evidence or enforceable mechanism to ensure that the future operations of Bruce Mansfield will demonstrate variability representative of Unit 2 rather than Unit 1, and as such there is no demonstrable mechanism to ensure compliance with the NAAQS.

*Response 4b.* PADEP followed the recommendation in EPA's 2014 $SO_2$ Nonattainment Guidance to use an appropriate emissions data set when determining the adjustment factors. The data set used should be sufficiently robust in terms of time covered, should be representative of the type of control strategy that is expected after the attainment plan controls are in place and should reflect the emissions variability that might be expected at the source once the SIP is implemented. However, PADEP did not use the same data handling procedures for development of the adjustment factor as for the calculation of compliance with the limit, which is recommended in EPA's 2014 $SO_2$ Nonattainment Guidance. PADEP calculated unit specific adjustment factors even though the form of the limit was for combined units. PADEP's use of Unit 2's adjustment factor for Unit 1 did provide for a higher 30-day average limit than would have resulted from the use of separate adjustment factors for the two limits. However, if PADEP followed EPA's Guidance in calculating the adjustment factor using the same data handling proecures as the form of the limit, they would have combined Units 1 and 2, and developed one adjustment factor based on the sum of the two units' emissions. EPA did this analysis and obtained an adjustment factor of 0.72. EPA's analysis supports the adjustment factor that PADEP applied. In fact, PADEP's approach provides for a slightly lower adjustment factor than would have been calculated using EPA's recommended approach. EPA's analysis is described in the TSD for this action.

EPA reviewed the hourly emissions data from 2012 to 2016 for Units 1 and 2, and continues to assert that Unit 2's emissions tend to be higher more frequently. Based on the commenter's explanation of the analysis they conducted to claim that Unit 2's emissions were lower than Unit 1's emissions for nearly 5,000 hours, EPA believes the commenter may be comparing the hourly emission value per hour of each specific day (*i.e.,* Unit 1, Day 1-Hour 1 versus Unit 2, Day 1-Hour 1). However, EPA does not believe this type of comparison is relevant to the adjustment factor analysis for a limit. EPA believes that a larger data set and more robust statistical analysis over a longer period of time, such as five years (as PADEP did), and use of data calculated in the same manner in which Pennsylvania will be determining compliance, provides a better portrayal of the influence of variability on the stringency of each limit and thus the degree of adjustment each limit needs to be comparably stringent to the 1-hour limits that Pennsylvania would otherwise have imposed.

Providing further support for the use of a 0.717 adjustment factor for Unit 1 and Unit 2, the adjustment factor listed in Appendix D of EPA's $SO_2$ Nonattainment Guidance for Sources with Wet Scrubbers (30-day average vs. 1-hour adjustment factor) is 0.71. Therefore, EPA continues to believe that the adjustment factors used for Units 1 and 2 provide for a comparably stringent 30-day emission limit.

Regarding the commenter's concern that there is no enforceable mechanism provided to ensure that future emissions variability of Bruce Mansfield will reflect the emissions variability representative of Unit 2 rather than Unit 1, EPA has provided options to states in the 2014 $SO_2$ Nonattainment Guidance to reduce the likelihood of increased emissions varaiability in the future. PADEP followed EPA's Guidance of adopting a direct work practice requirement for control equipment which could set a minimum level of control efficiency. The Bruce Mansfield plant is required to use this work practice in order to ensure that the NAAQS is not exceeded. To this end, the Bruce Mansfield plant FGDs must achieve at least a 95% design removal efficiency on Units 1, 2, and 3 during normal operating conditions following the general requirements of 25 Pa. Code Chapter 139.11 and the testing frequency contained in the COA. This additional work practice requirement provides greater assurance that there will be less variability in emissions when complying with the 30-day limits, as well as minimizing the likely frequency and magnitude of elevated emissions. In addition, as stated in the 2014 $SO_2$ Nonattainment Guidance, if the source is exceeding the expected variability, such that the plan proves not to provide the expected confidence that the NAAQS is being attained, EPA will use its available authority to pursue any necessary correction of the plan.

*Comment 5.* The commenter states that the emission limits for Bruce Mansfield are needlessly complex and prevent transparency in determining compliance. The commenter asserts that the emission limit formula only applies when both Chimney 1 and Chimney 2 are operating, and as such it is unclear what limits apply when one chimney is not operating. In addition, the commenter states that when Chimney 2 emits over 3584 lbs/hour on a 30-day average, it is not clear what the allowable emission limits are for Chimney 1. The commenter states that a Federal plan with transparent emission limits should be adopted.

*Response 5.* EPA disagrees with the commenter that the emission limits for Bruce Mansfield are needlessly complex and lack the transparency needed to determine compliance. While the formula-based emission limit requires extra calculation to determine compliance, and therefore is more complex than a Unit-specific 30-day limit, all the data needed to calculate whether Bruce Mansfield is complying with the limit are available from the PADEP certified CEM data and are reported to EPA's Clean Air Markets Division. The CEM data are available at *https://ampd.epa.gov/ampd/.* Anyone may then determine Bruce Mansfield's compliance status simply by retrieving those data into a spreadsheet (or other suitable software) and applying the formula in the Pennsylvania's rule. As such, the limit is sufficiently transparent for Federal, state and public scrutiny.

EPA disagrees that the emission limit is not clear when one chimney is not operating. As described in the NPRM, Unit 1 and Unit 2 each vent through two flues within Chimney 1, and Unit 3 vents through two flues in Chimney 2. The 30-operating day rolling average $SO_2$ emissions rate for Units 1 and 2 cannot exceed the result of equation one (EQ–1), below, with Chimney 1 and Chimney 2 in service, calculated daily. Pursuant to this equation, the limit for the sum of emissions from Unit 1 and Unit 2 is a function of the emissions from Unit 3, with a maximum limit (when Unit 3 has low emissions) under 7,100 lb/hr. In addition, if Unit 3 is not operating (and therefore only Chimney 1 is operating), the 30-operating day rolling average emissions rate cannot exceed 7,362 lb/hr for Units 1 and 2 combined. The 30-operating day rolling average $SO_2$ emissions rate for Chimney 2 (Unit 3) cannot exceed 3,584 lb/hr.

$$\text{EQ–1: } CH1SO_2\ Lim = -1.38E\text{-}04 \times CH2SO_2^2 - 0.920 \times CH2SO_2 + 7100$$

Where:

$CH1SO_2$ Lim: Chimney 1 $SO_2$ lb/hr 30-day rolling average

$CH1SO_2$ Lim ≤7,362 lb/hr

$CH2SO_2$: Chimney 2 $SO_2$ lb/hr 30-day rolling average

$CH2SO_2$ ≤3,584 lb/hr

In other words, if Chimney 1 is not in service, the stand-alone 30-operating day rolling average emission limit for Chimney 2 (Unit 3) is set at 3,584 lb/hr. If Chimney 2 is not in service, Chimney 1's 30-operating day average emission limit is 7,362 lb/hr. EPA continues to assert that the 30-operating day limit established for Bruce Mansfield is clear and transparent and therefore a Federal plan with a different limit is unnecessary.

*Comment 5a.* The commenter asserts that the emission inventories are improper because the projected 2018 emissions of 32,443 tons of $SO_2$ are greater than the actual emissions of 26,622 tons reported for 2011, when the Beaver County $SO_2$ monitor had a design value of 136 ppb. The commenter asserts that this increase in emissions is particularly egregious for Bruce Mansfield with 21,196 tons of $SO_2$ in 2011, and allowable 2018 emissions of 32,246 tons.

*Response 5a.* The commenter is comparing allowable emissions for 2018 against actual emissions for 2011. EPA agrees with the commenter that the allowable annual 2018 emissions for Bruce Mansfield (and for all sources combined in the Beaver Area) are greater than the base year 2011 annual actual emissions for Bruce Mansfield (and for all sources in the Beaver Area combined, respectively). However, air quality in a multi-source area like this is not a function of total allowable emissions, since sources with different stack heights, different locations, and other differences will have different impacts per ton of emissions. For example, the monitor is near the former Horsehead facility and the former AES Beaver facility, and the improvements in air quality at the monitor have clearly been more influenced by the shutdown of these facilities than by the decline in actual emissions at Bruce Mansfield. In this area, modeling provides the best information regarding the impact per ton of emissions from each facility. Pennsylvania has conducted an appropriate modeling analysis of this area, and EPA concurs with the state's finding that its limits for Bruce Mansfield (which reduce allowable emissions), in combination with the other emission reductions in the area, will assure that the area attains the standard, notwithstanding the fact that these limits allow more total emissions than were actually emitted in 2011.

*Comment 5b.* The commenter further claims that assuming 8,760 hours in a year, Bruce Mansfield's allowable annual emissions of 32,246 tons translates to an hourly allowable rate of 7,362 lbs/hr, an emission rate that is higher than many of the emission rate scenarios modeled by FirstEnergy. Also, because these modeled scenarios model attainment less than one microgram per cubic meter below the NAAQS, the annual allowable maximum $SO_2$ emissions for Bruce Mansfield are much greater than what the modeling indicates are protective of the NAAQS.

*Response 5b.* EPA disagrees with commenter that the allowable emissions for Bruce Mansfield are not protective of the NAAQS. EPA understands the commenter's concern as follows: Since there are modeled scenarios where the combined hourly emission value of Units 1, 2 and 3, are less than 7,362 lb/hr (which is the highest 30-day average emission value allowed under the emission limits) and those model runs show $SO_2$ concentrations very close to the standard, then an allowable emissions rate of 7,362 lb/hr is much

greater than what several modeling runs indicate is protective of the NAAQS.

The commenter incorrectly assumes that all modeled scenarios are permitted. However, that is not the case. Seventeen scenarios with varying combinations of 1-hour critical emission values for Unit 1 and 2, and Unit 3 were modeled and used to develop an equation for limiting the combination of emissions from Units 1, 2 and 3 at Bruce Mansfield. As shown in Table 1, all 17 scenarios modeled attainment.

In addition to the limit on the combination of the three units' emissions, Pennsylvania also set a limit specifically limiting the emissions from Unit 3, that Unit 3 30-operating day average emissions shall not exceed 3,584 lb/hr. In model runs 9 through 11, Unit 3's emissions correspond to an adjusted 30-day average value that would have been greater than 3,584 lb/hr. Thus, these runs are disallowed scenarios.

It is these three model runs that the commenter refers to as those showing $SO_2$ concentrations very close to the standard, and asserts that the allowable emissions (calculated from these 1-hour values; *i.e.,* for model run 9 from Table 1, using the 1-hour CEVs, 2056.54 + 4743.88 = 6800.42 lb/hr combined CEV for all units) are much less than the allowable emissions that PADEP calculates. Although the relevant values are hourly emissions, adjusted to be limited with 30-day average limits, both the commenter and PADEP calculated the corresponding annual emission rates. The model run 9 values correspond to annual emissions of 29,786 tons per year, which is much less than PADEP's calculated allowable annual emissions of 32,246 tons per year. If the emission rates in model runs 9 through 11 were allowable, they would indicate that Pennsylvania's limits are not protective of the NAAQS. However, these model runs contain disallowed emission rates, and so these runs are not indicative of the emission rates necessary to attain the standard. Therefore, EPA continues to support Bruce Mansfield's 30-day emission limits as demonstrating attainment of the 1-hour $SO_2$ NAAQS.

TABLE 1—MODELING RESULTS AND EMISSION VALUES FOR THE BRUCE MANSFIELD FACILITY

| Model run | Modeled emissions for Units 1 + 2 (lb/hr) | Corresponding 30-day average emissions for Units 1 + 2 (lb/hr) ** | Modeled emissions for Unit 3 (lb/hr) | Corresponding 30-day average emissions for Unit 3 (lb/hr) ** | 30-day average $SO_2$ limit for Units 1 + 2 based on 30-day average equivalent to modeled Unit 3 emissions (lb/hr) *** | Modeled maximum using the 1-hr CEV from column 1 and 3 |
|---|---|---|---|---|---|---|
| 1 ** | 10,282.70 | 7,372.70 | 0.00 | 0.00 | Disallowed | 196.17563 |
| 2 | 9,254.43 | 6,635.43 | 761.19 | 604.38 | 6493.6 | 196.18089 |
| 3 | 8,226.16 | 5,898.16 | 1,482.72 | 1,177.28 | 5825.6 | 196.17966 |
| 1FE * | 7,484.24 | 5,366.20 | 2,006.14 | 1,592.88 | 5284.4 | 196.18033 |
| 4 | 7,197.89 | 5,160.89 | 2,206.62 | 1,752.06 | 5064.5 | 196.17977 |
| 2FE * | 6,765.97 | 4,851.20 | 2,507.57 | 1,991.01 | 4721.2 | 196.14426 |
| 5 | 6,169.62 | 4,323.62 | 2,885.44 | 2,291.04 | 4267.9 | 196.18044 |
| 3FE * | 5,952.47 | 4,267.92 | 3,009.17 | 2,389.28 | 4114.1 | 196.07897 |
| 6 | 5,141.35 | 3,686.35 | 3,469.90 | 2,755.10 | 3517.8 | 196.17912 |
| 4FE * | 5,051.66 | 3,622.04 | 3,510.68 | 2,787.48 | 3463.3 | 196.11106 |
| 7 | 4,113.08 | 2,949.08 | 3,985.46 | 3,164.46 | 2806.8 | 196.17974 |
| 5FE * | 4,015.93 | 2,879.42 | 4,012.20 | 3,185.69 | 2768.7 | 196.04158 |
| 8 | 3,084.81 | 2,211.81 | 4,407.53 | 3,499.58 | 2190.3 | 196.18032 |
| 6FE * | 2,857.18 | 2,048.60 | 4,513.72 | 3,583.89 | 2030.3 | 196.10031 |
| 9 ** | 2,056.54 | 1,474.54 | 4,743.88 | 3,766.64 | Disallowed | 196.18082 |
| 10 ** | 1,028.27 | 737.27 | 4,956.43 | 3,935.41 | Disallowed | 196.18081 |
| 11 ** | 0.00 | 0.00 | 5,041.58 | 4,003.01 | Disallowed | 196.17832 |

* FirstEnergy Model run.

** Disallowed modeled scenarios. Model run 1 is disallowed because the emission limit equation only applies when both Chimneys are operating. Model runs 9–11 are prohibited as Unit 3's 30-day average emission rate is greater than the comparably stringent 30-day emission limit of 3,584 lb/hr.

*** The limit that would result from the compliance equation (EQ–1) using the Unit 3 30-operating day average emission rate that corresponds to the modeled 1-hour rate (from fifth column of this table).

## III. Final Action

EPA is approving Pennsylvania's SIP revision submittal for the Beaver Area, as submitted by PADEP to EPA on September 29, 2017 for the purpose of demonstrating attainment of the 2010 1-hour $SO_2$ NAAQS. EPA has determined that Pennsylvania's $SO_2$ attainment plan for the 2010 1-hour $SO_2$ NAAQS for the Beaver Area meets the applicable requirements of the CAA in sections 110, 172 and 191–192, and comports with EPA's recommendations discussed in the 2014 $SO_2$ Nonattainment Area Guidance. Specifically, EPA is approving the base year emissions inventory, a modeling demonstration of $SO_2$ attainment, an analysis of RACM/RACT, an RFP plan, and contingency measures for the Beaver Area, and concludes that the Pennsylvania SIP has met requirements for NSR for the 2010 1-hour $SO_2$ NAAQS. Additionally, EPA is approving into the Pennsylvania SIP specific $SO_2$ emission limits, compliance parameters and contingency measures established for Bruce Mansfield, and operational restrictions for the Jewel Facility. Furthermore, approval of this SIP submittal removes EPA's duty to promulgate and implement a FIP under CAA section 110(c) for the Beaver Area.

## IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the unredacted portions of the COA entered between Pennsylvania and FirstEnergy Generation, LLC for the Bruce Mansfield Generating Station, and the COA entered between Pennsylvania and Jewel Acquisition, LLC on September 21, 2017 as described in the amendments to 40 CFR part 52 set forth below. This includes emission limits and associated compliance parameters,

record-keeping and reporting, and contingency measures for Bruce Mansfield; and operational restrictions for the Jewel Facility. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov/* or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[11]

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Beaver Area attainment plan for the 1-hour $SO_2$ NAAQS into the Pennsylvania SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 13, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. The table in paragraph (d)(3) is amended by adding an entry for ''Bruce Mansfield Generating Station and an entry for Jewel Acquisition, LLC'' at the end of the table; and

■ b. The table in paragraph (e)(1) is amended by adding an entry for ''Attainment Plan for the Beaver, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard'' at the end of the table.

The additions read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(d) * * *

(3) * * *

[11] 62 FR 27968 (May 22, 1997).

| Name of source | Permit No. | County | State effective date | EPA approval date | Additional explanation/§ 52.2063 citation |
|---|---|---|---|---|---|
| * | * | * | * | * | * * |
| Bruce Mansfield Generating Station. | FirstEnergy Redacted Consent Order and Agreement. | Beaver ..... | 10/1/18 | 10/1/19, [*Insert* ***Federal Register*** *citation*]. | Sulfur dioxide emission limits and related parameters in unredacted portions of the Consent Order and Agreement dated 9/21/17. |
| Jewel Acquisition, LLC, Midland Facility. | Jewel Acquisition Redacted Consent Order and Agreement. | Beaver ..... | 9/21/17 | 10/1/19, [*Insert* ***Federal Register*** *citation*]. | Operational restrictions and related parameters in unredacted portions of the Consent Order and Agreement. |

* * * * *

(e) * * *

(1) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * * |
| Attainment Plan for the Beaver, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard. | Industry Borough, Shippingport Borough, Midland Borough, Brighton Township, Potter Township and Vanport Township. | 9/29/17 | 10/1/19, [*Insert* ***Federal Register*** *citation*] | 52.2033(d) |

* * * * *

■ 3. Section 52.2033 is amended by adding paragraph (d) to read as follows:

**§ 52.2033 Control strategy: Sulfur oxides.**

* * * * *

(d) EPA approves the attainment demonstration State Implementation Plan for the Beaver, PA Nonattainment Area submitted by the Pennsylvania Department of Environmental Protection on September 29, 2017.

[FR Doc. 2019–20848 Filed 9–30–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2019–0216; FRL–10000–38-Region 5]**

## Air Plan Approval; Ohio; Second Maintenance Plan for 1997 Ozone NAAQS; Dayton-Springfield

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), Ohio's plan for maintaining the 1997 ozone National Ambient Air Quality Standard (NAAQS or standard) through 2028 in the Dayton-Springfield area. The Dayton-Springfield area consists of Clark, Greene, Miami and Montgomery Counties. The Ohio Environmental Protection Agency submitted this state implementation plan (SIP) revision to EPA on April 12, 2019.

**DATES:** This final rule is effective October 31, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0216. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

### I. What is being addressed in this document?

This rule approves Ohio's April 23, 2019 submission of a plan to provide for maintenance of the 1997 ozone standard in the Dayton-Springfield area through 2028. The Dayton-Springfield area was designated as nonattainment for the 1997 ozone NAAQS on April 15, 2004 (69 FR 23857) and subsequently redesignated to attainment on August 13, 2007 (72 FR 45169). As a prerequisite to redesignation, Ohio developed a maintenance plan for the Dayton-Springfield area as required by CAA section 175A. The maintenance plan demonstrated that the area would continue to maintain the 1997 ozone standard through 2018 (more than 10 years after redesignation) and contained contingency provisions to assure that violations of the standard would be promptly corrected.

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. On April 12, 2019, Ohio submitted a second maintenance plan for the Dayton-Springfield area demonstrating continued maintenance of the 1997 ozone NAAQS through 2028, *i.e.,* through the end of the full 20-year maintenance period.

On July 9, 2019 (84 FR 32678), EPA proposed to approve Ohio's April 12, 2019 submittal. The specific details of Ohio's second 1997 ozone NAAQS maintenance plan for the Dayton-Springfield area and the rationale for EPA's approval are discussed in the notice of proposed rulemaking and will not be restated here.

### II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period for the July 9, 2019, proposed rule. The comment period

ended on August 8, 2019. We received no comments on the proposed rule.

### III. What action is EPA taking?

EPA is approving, as a revision to the Ohio SIP, the State's plan for maintaining the 1997 ozone NAAQS through 2028 in the Dayton-Springfield area.

### IV. Statutory and Executive Order Reviews

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

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

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

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

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: September 11, 2019.

**Cheryl L Newton,**

*Acting Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (e) is amended under the subheading ''Summary of Criteria Pollutant Maintenance Plan'' by revising the entry for ''Ozone 8-Hour'' for Dayton-Springfield (Miami, Montgomery, Clark, and Greene Counties) with a State date of 11/6/2006 to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| Title | Applicable geographical or non-attainment area | State date | EPA approval | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **Summary of Criteria Pollutant Maintenance Plan** | | | | |
| * | * | * | * | * |
| Ozone (8-Hour, 1997) | Dayton-Springfield (Miami, Montgomery, Clark, and Greene Counties). | 4/12/2019 | 10/1/2019, [insert **Federal Register** citation]. | 2nd maintenance plan. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2019–20850 Filed 9–30–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2019–0278; FRL–10000–49–Region 4]**

## Air Plan Approval; KY; Existing Indirect Heat Exchangers for Jefferson County

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is approving changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), through a letter dated March 15, 2018. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County Regulations regarding existing indirect heat exchangers.

**DATES:** This rule will be effective October 31, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0278. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

**SUPPLEMENTARY INFORMATION:**

### I. Background

EPA is approving changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through Kentucky's Division of Air Quality via a letter dated March 15, 2018.[1] [2] EPA is approving the portions of this SIP revision that make changes to the District's Regulation 6.07, *Standards of Performance for Existing Indirect Heat Exchangers.*[3] The March 15, 2018, SIP revision makes minor and ministerial changes to Regulation 6.07 that do not alter the meaning of the regulation or the emissions levels for sources regulated under the Jefferson County Regulations, such as clarifying changes to its applicability. In addition, other changes in the submittal strengthen the SIP by adding specific test methods and procedures for determining compliance with applicable emissions limits for affected facilities. Accordingly, these rule changes do not relax the emissions reductions to applicable sources, nor do they change any applicable emissions limitations. The SIP revision updates the current SIP-approved version of Regulation 6.07 (version 3) to version 4.

See EPA's July 22, 2019 (84 FR 35052), notice of proposed rulemaking (NPRM) for further detail on these changes and EPA's rationale for approving them. EPA received adverse comments on the NPRM. EPA received one additional comment, available in the docket for this action, which is not relevant to this rulemaking. EPA has summarized and responded to the adverse comments in Section II of this action.

### II. Response to Comments

*Comment*: One commenter states that EPA should disapprove Regulation 6.07 because ''it is inconsistent with the National Environmental Policy Act (NEPA) and it violates the Kentucky Clean Air Act.''

*Response:* EPA disagrees with this comment. The Agency is taking action pursuant to the Federal CAA, and actions under the CAA are exempt from NEPA. *See* 15 U.S.C. 793(c)(1). To the extent the commenter intended to reference Kentucky's *Air Pollution Control District Act* (codified at Kentucky Revised Statutes (KRS), Chapter 77, Air Pollution Control) in its comment regarding the ''Kentucky Clean Air Act,'' EPA notes that the District approved the revisions under KRS Chapter 77, stating in the SIP submittal that KRS 77.180 provides for the control of emissions from indirect heat exchangers.[4] Further, EPA notes that the commenter does not provide any rationale or information supporting its assertions.

*Comment:* One commenter states that the rule poses significant risks to public health and the environment and that it will negatively impact Kentucky's electricity market and increase energy prices in Kentucky. Similarly, another commenter suggests that EPA should ''revisit'' the rule because it does not properly address the community's needs and that the ''system in place to assist our community in reducing energy costs is not the 'best' fit today and is not fit in the future for our community.''

*Response:* EPA disagrees that the SIP revision poses a significant risk to public health and the environment. The changes to Regulation 6.07 do not alter any applicable emissions limitations and are therefore not expected to increase emissions. Rather, the revisions clarify and strengthen the SIP by providing specific testing requirements for certain sources. In addition, sources regulated pursuant to Regulation 6.07 are not otherwise required by Federal regulations to achieve emissions reductions; therefore, Regulation 6.07 benefits Jefferson County by requiring specific emissions reductions for particulate matter (PM) and sulfur dioxide ($SO_2$) from these sources.

[1] EPA received the SIP revision on March 23, 2018.

[2] In 2003, the City of Louisville and Jefferson County governments merged and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' *See* The History of Air Pollution Control in Louisville, *available at https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville.* However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading ''Air Pollution Control District of Jefferson County.'' Thus, to be consistent with the terminology used in the SIP, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[3] EPA received several submittals revising the Jefferson County portion of the Kentucky SIP transmitted with the same March 15, 2018, cover letter. EPA will consider action on these other SIP revisions in separate rulemakings.

[4] The SIP revision also states that KRS 77.180 authorizes the District to adopt and enforce all orders, rules, and regulations necessary or proper to accomplish the purposes of KRS Chapter 77.

With respect to the assertion that the action will impact the energy market and costs in Kentucky, EPA's role in reviewing SIP submittals is to approve state choices provided that they meet the minimum requirements of the CAA. *See* CAA section 110(k)(3). The economic reasonableness of the District's choice to modify Regulation 6.07 is not a factor that EPA can consider when acting on this SIP revision. *See* CAA section 110(a)(2); *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 256–66 (1976). EPA notes, however, that the District anticipates no increased costs as a result of these rule revisions, as stated in the SIP submittal. Further, EPA notes that the commenter does not provide any rationale or information supporting its assertions regarding energy costs and risks to public health and the environment.

*Comment:* One commenter states that EPA should disapprove the changes to Regulation 6.07 because they are ''inconsistent with EPA's national air quality management plan and are inconsistent with the Agency's statutory authority to define 'greenhouse gas emissions' (which is what the proposed amendments are addressing).''

*Response:* It is unclear how this comment relates to the proposal. The commenter does not provide any specific information regarding the ''national air quality management plan'' or EPA's statutory authority to define greenhouse gas emissions, nor does the commenter explain how this plan and authority are allegedly inconsistent with EPA's action to incorporate the changes to Regulation 6.07 into the SIP. Further, EPA notes that Regulation 6.07 regulates the emissions of criteria air pollutants, namely PM and $SO_2$, not greenhouse gases.

## III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County's Regulation 6.07, *Standards of Performance for Existing Indirect Heat Exchangers,* version 4, State effective January 17, 2018, which makes minor and ministerial changes to Regulation 6.07 that do not alter the meaning of the regulation or the emissions levels for sources and strengthens the SIP by adding specific test methods and procedures for determining compliance with applicable emissions limits for affected facilities. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

## IV. Final Action

EPA is approving changes to the Jefferson County portion of the Kentucky SIP included in a March 15, 2018, submittal. Specifically, EPA is approving the District's Regulation 6.07 version 4 into the SIP. The March 15, 2018, SIP revision makes minor and ministerial changes such as clarifying the applicability of the regulation, and includes more specific requirements for test methods and procedures for affected facilities. These changes are consistent with the CAA and EPA policy, and these rule adoptions will not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS) or with any other applicable requirement of the Act.

## V. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2019. Filing a petition for reconsideration by the

[5] *See* 62 FR 27968 (May 22, 1997).

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 17, 2019.

**Mary S. Walker,**

*Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart S—Kentucky

■ 2. In § 52.920(c), table 2 is amended under ''Reg 6–Standards of Performance for Existing Affected Facilities'' by revising the entry for ''6.07'' to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

| Reg | Title/subject | EPA approval date | **Federal Register** notice | District effective date | Explanation |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| **Reg 6—Standards of Performance for Existing Affected Facilities** | | | | | |
| * | * | * | * | * | * |
| 6.07 | Standards of Performance for Existing Indirect Heat Exchangers. | 10/1/2019 | [Insert **Federal Register** citation] | 1/17/2018 | |
| * | * | * | * | * | * |

* * * * *

[FR Doc. 2019–20841 Filed 9–30–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2019–0051; FRL–9999–49–Region 9]**

## Approval of Air Quality Implementation Plans; California; South Coast Air Basin; 1-Hour and 8-Hour Ozone Nonattainment Area Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve, or conditionally approve, all or portions of five state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''the Act'') requirements for the 1979 1-hour, 1997 8-hour, and 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the Los Angeles—South Coast Air Basin, California (''South Coast'') ozone nonattainment area. The five SIP revisions include the ''Final 2016 Air Quality Management Plan,'' the ''Revised Proposed 2016 State Strategy for the State Implementation Plan,'' the ''2018 Updates to the California State Implementation Plan,'' the ''Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration,'' and a local emissions statement rule. In today's action, the EPA refers to these submittals collectively as the ''2016 South Coast Ozone SIP.'' The 2016 South Coast Ozone SIP addresses the nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for an emissions inventory, attainment demonstration, reasonable further progress, reasonably available control measures, contingency measures, among others; establishes motor vehicle emissions budgets; and updates the previously-approved control strategies and attainment demonstrations for the 1-hour ozone NAAQS and the 1997 ozone NAAQS. The EPA is taking final action to approve the 2016 South Coast Ozone SIP as meeting all the applicable ozone nonattainment area requirements except for the reasonable further progress contingency measure requirement, for which the EPA is finalizing a conditional approval.

**DATES:** This rule will be effective on October 31, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0051. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3963, or by email at *ungvarsky.john@epa.gov.*

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II. Submittal of District Rule 301
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IV. Final Action
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### I. Summary of the Proposed Action

On June 17, 2019 (84 FR 28132), the EPA proposed to approve, under CAA section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), portions of submittals from the California Air Resources Board (CARB or ''State'') and the South Coast Air Quality Management District (SCAQMD

or ''District'') as revisions to the California SIP for the South Coast ozone nonattainment area.[1] The relevant SIP revisions include SCAQMD's Final 2016 Air Quality Management Plan (''2016 AQMP''), CARB's Revised Proposed 2016 State Strategy for the State Implementation Plan (''2016 State Strategy''), CARB's 2018 Updates to the California State Implementation Plan (''2018 SIP Update''), SCAQMD's Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration (''1-Hour Ozone Update''), and SCAQMD's local emissions statement rule (*i.e.,* certain paragraphs of District Rule 301 (''Permitting and Associated Fees''). With respect to the SCAQMD emissions statement rule, our proposal was based on a public draft version of the rule and requests from the District and CARB that the EPA accept the public draft for parallel processing.[2] Since publication of the proposed rule, the District has adopted, and CARB has submitted, the emissions statement rule as a SIP revision. The SIP submittal of the emissions statement rule is discussed in more detail in section II of this document. Collectively, we refer to the relevant portions of the five SIP revisions as the ''2016 South Coast Ozone SIP,'' and we refer to our June 17, 2019 proposed rule as the ''proposed rule.''

Our proposed conditional approval of the reasonable further progress (RFP) contingency measure element of the 2016 South Coast Ozone SIP relied on specific commitments: (1) From the District to modify an existing rule or rules, or adopt a new rule(s), that would provide for additional emissions reductions in the event that the South Coast fails to meet an RFP milestone, and (2) from CARB to submit the revised or new District rule(s) to the EPA as a SIP revision within 12 months of our final action.[3] [4] For more information on these submittals, please see our proposed rule.

In our proposed rule, we provided background information on the ozone standards,[5] area designations, and related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (''2008 Ozone SRR''). To summarize, the South Coast ozone nonattainment area is classified as Extreme for the 1-hour, 1997 and 2008 ozone standards, and the 2016 South Coast Ozone SIP was developed to update the attainment plans for the 1-hour and 1997 ozone NAAQS and to address the requirements for this Extreme nonattainment area for the 2008 ozone NAAQS.

In our proposed rule, we also discussed a decision issued by the D.C. Circuit Court of Appeals in *South Coast Air Quality Management Dist.* v. *EPA,* (''*South Coast II*'')[6] that vacated certain portions of the EPA's 2008 Ozone SRR. The only aspect of the *South Coast II* decision that affects this action is the vacatur of the provision in the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP. To address this, in the 2018 SIP Update, CARB submitted an updated RFP demonstration that relied on a 2011 baseline year as required, along with updated motor vehicle emissions budgets (MVEBs) associated with the new RFP milestone years.

With respect to the contingency measure requirement, in our proposed rule, we noted that the EPA's longstanding interpretation of section 172(c)(9) that states may rely on already-implemented measures as contingency measures (if they provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements) was rejected by the Ninth Circuit Court of Appeals in a case referred to as *Bahr* v. *EPA* (''*Bahr*'').[7] In *Bahr,* the Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.[8] Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already-implemented control measures to comply with the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9).[9]

For our proposed rule, we reviewed the various SIP elements contained in the 2016 South Coast Ozone SIP, evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements with the exception of the RFP contingency measure element. More specifically, in our proposal rule, we determined the following:

- CARB and the District met all applicable procedural requirements for public notice and hearing prior to the adoption and submittal of the 2016 AQMP, 2016 State Strategy, 2018 SIP Update and 1-Hour Ozone Update;
- The 2012 base year emissions inventory from the 2016 AQMP is comprehensive, accurate, and current and thereby meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS, and future year baseline projections reflect appropriate calculation methods and the latest planning assumptions and are properly supported by SIP-approved stationary and mobile source measures (see 84 FR 28137–28139 from the proposed rule);
- The emissions statement element of the 2016 AQMP, including public draft version of District Rule 301 (specifically, paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)), meets the requirements for emissions statements under CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 84 FR 28139–28140 from the proposed rule);
- The process followed by the District to identify reasonably available control measures (RACM) is generally consistent with the EPA's

[1] The South Coast ozone nonattainment area includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. A precise description of the South Coast ozone nonattainment area is contained in 40 CFR 81.305.

[2] Letters dated May 17, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB, and May 20, 2019, from Richard W. Corey, Executive Officer, CARB to Michael Stoker, Regional Administrator, EPA Region IX.

[3] Letters dated January 29, 2019 and May 2, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB.

[4] Letter dated February 13, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, and letter dated May 20, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.

[5] Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$) in the presence of sunlight. The 1-hour ozone NAAQS is 0.12 parts per million (ppm) (one-hour average), the 1997 ozone NAAQS is 0.08 ppm (eight-hour average), and the 2008 ozone standard is 0.075 ppm (eight-hour average). CARB refers to reactive organic gases (ROG) in some of its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this final rule, we use the term federal term (VOC) to refer to this set of gases.

[6] *South Coast Air Quality Management Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''*South Coast.*'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[7] *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

[8] Id. at 1235–1237.

[9] The *Bahr* v. *EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the ozone-specific contingency measure provision in section 182(c)(9), we find that the decision affects how both sections of the Act must be interpreted.

recommendations; the District's rules and commitments made to adopt certain additional measures provide for the implementation of RACM for stationary and area sources of oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC); CARB and the Southern California Association of Governments (SCAG) provide for the implementation of RACM for mobile sources of $NO_X$ and VOC; there are no additional RACM that would advance attainment of the 2008 ozone NAAQS in the South Coast by at least one year; and therefore, the 2016 AQMP and 2016 State Strategy provide for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS (see 84 FR 28140–28143 from the proposed rule);

• The photochemical modeling in the 2016 AQMP and 1-Hour Ozone Update shows that existing CARB and District control measures, plus CARB and District commitments to achieve additional emissions reductions in the 2016 AQMP and 2016 State Strategy, are sufficient to attain the 1-hour, 1997 and 2008 ozone NAAQS by the applicable attainment dates in the South Coast; given the extensive documentation in the 2016 AQMP of modeling procedures and good model performance, the modeling is adequate to support the attainment demonstrations for the three ozone NAAQS; and therefore, the 2016 South Coast Ozone SIP meets the attainment demonstration requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108 (see 84 FR 28143–28157 from the proposed rule);

• As provided in our SRR, the previously-approved 15 percent rate-of-progress (ROP) demonstration for the 1-hour ozone NAAQS for the South Coast meets the ROP requirements of CAA section 182(b)(1) for the South Coast for the 2008 ozone NAAQS given that the boundaries of the South Coast nonattainment area for the 1-hour ozone NAAQS and the 2008 ozone NAAQS are the same (see 84 FR 28157–28158 from the proposed rule);

• The RFP demonstration in the 2018 SIP Update provides for emissions reductions of VOC or $NO_X$ of at least 3 percent per year on average for each three-year period from a 2011 baseline year through the attainment year and thereby meets the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS (see 84 FR 28157–28158 from the proposed rule);

• The 2016 AQMP (specifically, appendix VI–E (''VMT Offset Demonstration'')) demonstrates that CARB and SCAG have adopted sufficient transportation control strategies and transportation control measures to offset the growth in emissions from growth in vehicle-miles-traveled (VMT) and vehicle trips in the South Coast, and thereby complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 84 FR 28158–28161 from the proposed rule);

• Through EPA-approved District Rules 1303 (''Requirements''), 1146 (''Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters''), and 2004 (''Requirements'') (paragraph (h)), the 2016 AQMP meets the clean fuels or advanced control technology for boilers requirement in CAA section 182(e)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 84 FR 28163–28164 from the proposed rule);

• The MVEBs for the RFP milestone years of 2020, 2023, 2026, 2029, and the attainment year of 2031 from the 2018 SIP Update are consistent with the RFP and attainment demonstrations, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements in 40 CFR 93.118(e), including the adequacy criteria in 40 CFR 93.118(e)(4) and (5) (see 84 FR 28164–28166 from the proposed rule); [10]

• The general conformity budgets in the 2016 AQMP are established for a set time period, cover both precursors of ozone, are precisely quantified, and are consistent with the attainment demonstrations for the three ozone NAAQS in the South Coast, and the 2016 AQMP provides an adequate tracking procedure to ensure compliance (see 84 FR 28166–28167 from the proposed rule); and

• Through previous EPA approvals of the State's I/M program, the 1994 ''Opt-Out Program'' SIP revision, the 1993 Photochemical Assessment Monitoring Station (PAMS) SIP revision, and the 2016 annual monitoring network plan for the South Coast, the 2016 AQMP adequately addresses for the 2008 ozone NAAQS: The enhanced vehicle inspection and maintenance (I/M) requirements in CAA section 182(c)(3) and 40 CFR 51.1102; the clean fuels fleet program in CAA sections 182(c)(4) and 246 and 40 CFR 51.1102; and the enhanced ambient air monitoring requirements in CAA section 182(c)(1) and 40 CFR 51.1102 (see 84 FR 28167–28168 from the proposed rule).

With respect to the RFP contingency measure element of the 2016 South Coast Ozone SIP, we proposed to conditionally approve the element as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for the 2008 ozone NAAQS, based on commitments by CARB and the District to supplement the element through submission of a SIP revision within one year of final conditional approval action that will include a revised or new District rule or rules.[11] See pages 28161–28163 from the proposed rule.

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for approval or conditional approval of the above-listed elements of the 2016 South Coast Ozone SIP.

## II. Submittal of District Rule 301

As noted above, we proposed to approve the emissions statement element of the 2016 South Coast Ozone SIP based on a public draft version of District Rule 301 (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)) and a May 20, 2019 request from CARB that the EPA accept the public draft version of District Rule 301 for parallel processing. Under the EPA's parallel processing procedure, the EPA may propose action on a state's public draft version of a SIP revision but will take final action only after the state adopts and submits the final version to the EPA for approval.[12] If there are no significant changes from the draft version of the SIP revision to the final version, the EPA may elect to take final action on the proposal.

In this case, on July 12, 2019, the District adopted without significant modifications the final version of District Rule 301 previously released for public review, and on August 5, 2019, CARB adopted and submitted District Rule 301 to the EPA as a revision to the

[10] In light of CARB's request to limit the duration of the approval of the budgets in the 2018 SIP Update and in anticipation of the EPA's approval, in the near term, of an updated version of CARB's EMFAC (short for EMission FACtor) model for use in SIP development and transportation conformity in California to include updated vehicle mix and emissions data, we proposed to limit the duration of our approval of the budgets until replacement budgets have been found adequate. See pages 28165–28166 from the proposed rule.

[11] In light of the proposed approval of the attainment demonstration for the 2008 ozone NAAQS, the reliance of the attainment demonstration on section 182(e)(5) new technology measures, and CARB's clarification concerning the agency's commitment to submit section 182(e)(5) contingency measures, we proposed to find that CARB's commitment to submit attainment contingency measures provides an adequate basis to defer submittal of attainment contingency measures meeting the requirements in CAA section 172(c)(9) for the 2008 ozone NAAQS until 2028.

[12] See 40 CFR part 51, appendix V, section 2.3.

California SIP.[13] The submittal includes CARB Executive Order S–19–011 adopting the specified sections of District Rule 301 as a revision to the SIP, a copy of District Rule 301 itself, and documentation of public notice and opportunity to comment on the draft rule. We based our proposed action on the public draft version of District Rule 301 submitted to us on May 20, 2019, and we are now finalizing our action based on the August 5, 2019 submittal of the final adopted version of District Rule 301.

For this final rule, we have evaluated the August 5, 2019 submittal for compliance with CAA procedural requirements for adoption and submission of SIP revisions. Specifically, CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

The District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submittal of District Rule 301. On May 17, 2019, the District published a notice of public hearing to be held on July 12, 2019, to consider approval of amendments to District Rule 301, including the addition of a paragraph requiring certification of annual emissions information. On July 12, 2019, the District held the hearing, adopted the amendments to District Rule 301, as proposed, and approved the submission of District Rule 301 (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)) to CARB for submittal to the EPA for inclusion into the California SIP.[14] On August 5, 2019, through Executive Order S–19–011, the CARB Executive Officer approved the relevant portion of District Rule 301 as a revision to the California SIP, and on August 5, 2019, CARB submitted it to the EPA. Because the District and CARB have complied with all applicable procedural requirements for adoption and submittal of SIP revisions, and because the final, adopted version of District Rule 301 is essentially the same as the draft version of the rule for which we proposed approval, we are taking final action today to approve District Rule 301 (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8) only) as meeting the emissions statement requirements of CAA 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS.

## III. Public Comments and EPA Responses

The public comment period on the proposed rule opened on June 17, 2019, the date of its publication in the **Federal Register**, and closed on July 17, 2019. During this period, the EPA received two anonymous comments, two comment letters submitted by private individuals, one comment letter submitted on behalf of the North American Insulation Manufacturers Association (NAIMA), and one comment letter submitted by Earthjustice on behalf of the Center for Community Action & Environment Justice (CCAEJ).[15]

One of the anonymous commenters expresses overall support for the proposed action. The other anonymous commenter describes certain pending legislation in Congress, an issue that is outside the scope of this rulemaking. One of the private individuals submitted numerous documents to the EPA, but the commenter's written comment does not relate to any specific aspect of our proposed rule nor does it explain the relevance of the submitted documents to our proposed action. The EPA is not responding to these three commenters, either because their comments are not adverse to, or because they are not relevant to, the proposed action. With respect to the other commenters, we provide summaries of the comments and our responses thereto in the following paragraphs. All the comments received are included in the docket for this action.

*Comment #1:* A private individual makes numerous general assertions against the State of California regarding, for example, motor vehicle standards, interstate commerce, California's high-speed rail project, and the California Environmental Quality Act (CEQA). Citing three specific examples,[16] the commenter alleges inadequate consideration of public comments by State and local public agencies during environmental review of projects or documents that are subject to the State's CEQA process. The commenter contends that such inadequacies are systemic in California and, as such, apply to the State's actions in nonattainment areas. The commenter also alleges failure by California public agencies to reduce the impacts of increased commute times through adoption of appropriate land use policies and trip reduction measures.

*Response #1:* Because the general assertions against California described by the commenter are not linked by the commenter to specific aspects of our proposed rule, the EPA is not responding to the assertions. As described in the proposed rule[17] and in section II of this document, we have reviewed the public process documentation for the development, adoption and submittal of the five SIP revisions that collectively comprise the 2016 South Coast Ozone SIP and conclude that they meet the procedural requirements for public notice and hearing for SIP revisions as set forth in CAA sections 110(a) and 110(l) and 40 CFR 51.102. None of the specific examples cited by the commenter relate to the public processes (including CEQA) used by the District and CARB to develop, adopt and submit the 2016 South Coast Ozone SIP, and a generalized assertion about alleged inadequacies generally to meet California public agency public processes (*e.g.,* CEQA) is not sufficient to contradict the specific findings we have made in connection with the public processes used by the District and CARB in developing, adopting and submitting the 2016 South Coast Ozone SIP.

With respect to land use policies and trip reduction measures to reduce commute-related vehicle emissions, we note that the 2016 AQMP includes a number of transportation control measures that are intended to reduce vehicle use or change traffic flow or congestion conditions.[18]

*Comment #2:* For a number of reasons, including the absence of fiberglass manufacturing facilities in the South Coast, the risk of unwarranted precedent for similar types of rules in other SIPs, and technical infeasibility, NAIMA urges the EPA to delete, from

[13] Letter dated August 5, 2019, from Richard W. Corey, CARB Executive Officer, to Michael Stoker, Regional Administrator, EPA Region IX.

[14] See District Resolution 19–15.

[15] In addition to the comments received during the comment period, on August 2, 2019, we received a late comment from the Scientific Integrity Institute challenging the validity of statements in the proposed rule concerning public health effects at current ozone exposure levels experienced by residents in the South Coast. This late comment has been placed in the rulemaking docket but is not addressed in this final rule because it is untimely.

[16] U.S. Highway 101 widening project in south Santa Barbara County involving the California Department of Transportation; Santa Barbara County's Fast Forward 2040 Federal Transportation Improvement Plan update; and CARB's Zero Emission Airport Shuttle Regulation.

[17] See 84 FR 28132, at 28136–28137 (June 17, 2019).

[18] See 2016 AQMP, attachment A (''Committed Transportation Control Measures (TCMs)'') to appendix IV–C (''Regional Transportation Strategy and Control Measures'').

the EPA's proposed rule, the modification of District Rule 1117 (''Emissions of Oxides of Nitrogen from Glass Melting Furnaces'') to remove the exemption for idling fiberglass furnaces.

*Response #2:* In 1990, the EPA approved District Rule 1117 (amended January 6, 1984) as a revision to the SCAQMD portion of the California SIP.[19] The SIP-approved version of District Rule 1117 includes exemptions for furnaces used in the melting of glass for the production of fiberglass exclusively and for idling furnaces.[20] In our June 17, 2019 proposed rule, we did not propose to remove the exemption for idling fiberglass furnaces in District Rule 1117 in the current approved SIP for SCAQMD, and our final action on the 2016 South Coast Ozone SIP will have no effect on District Rule 1117.

In our proposed rule, we do refer to the removal of exemptions in District Rule 1117 for idling furnaces used in the melting of glass for the production of fiberglass, but we do so as an example of the type of rule amendments that the District has included in its commitment to revise a District rule or rules to include as an RFP contingency measure.[21] In other words, this is a potential change to the existing SIP for SCAQMD that the District and CARB may determine is appropriate for use as a contingency measure in the event of future failures to meet the RFP requirement. The District's commitment is contained in a letter dated May 2, 2019, that clarifies an earlier commitment letter from the District dated January 29, 2019.[22] The District's May 2, 2019 letter lists 12 different rules, including District Rule 1117, that the District intends to review for possible inclusion as an RFP contingency measure. The letter also describes the types of amendments that the District and CARB are likely to consider for each of the rules, including, in some cases, the removal of exemptions.

In our final action on the 2016 South Coast Ozone SIP today, we are not approving the District's letters as part of the SIP or taking any action on potential changes to the District rules cited therein, but we are relying on the letters as the basis, in part, on which to conditionally approve the contingency measure element, as authorized under CAA section 110(k)(4). Over the course of the next year, to fulfill the commitment made with respect to the RFP contingency measure element, we expect the District to initiate rulemaking proceedings with respect to one or more of the rules listed in the May 2, 2019 commitment letter. We anticipate that such rulemaking proceedings would lead to adoption by the District of a provision for the removal of exemptions or lowering of emissions limits upon a determination by the EPA that the South Coast has failed to meet an RFP milestone for the 2008 ozone NAAQS. NAIMA is encouraged to participate in the District's rulemaking process if District Rule 1117 is selected by the District for amendment to include such an RFP contingency measure.

*Comment #3:* CCAEJ asserts that the EPA violates the CAA by waiving the previously adopted commitment to adopt section 182(e)(5) contingency measures for the 1-hour ozone NAAQS. According to CCAEJ, the EPA has no basis to determine whether the section 182(e)(5) measures have achieved the planned reductions as called for in section 182(e)(5), and the EPA cannot demonstrate that the section 182(e)(5) measures will achieve the necessary reductions to attain the 1-hour ozone NAAQS by the 2022 attainment year because we have not reached the deadline. CCAEJ also asserts that the decision to waive the section 182(e)(5) contingency measures is also arbitrary and capricious because taking away these contingency measure protections removes a necessary backstop for people in Extreme ozone nonattainment areas and presents people in the region with fewer protections if the area fails to attain the 1-hour ozone NAAQS.

*Response #3:* We agree that the CAA does not allow the EPA to ''waive'' a commitment that has been approved as part of a SIP. In this action, the EPA is not waiving any commitment, but rather, we are approving a SIP revision that demonstrates that the commitment is moot because the 1-hour ozone control strategy no longer relies on section 182(e)(5) new technology measures. If new technology measures are no longer needed, then section 182(e)(5) continency measures are no longer required, and if section 182(e)(5) contingency measures are no longer required, then an enforceable commitment to submit section 182(e)(5) contingency measures no longer serves any purpose.

Section 182(e)(5) of the CAA allows the EPA to approve an attainment demonstration for an Extreme ozone nonattainment area based on provisions that anticipate development of new control techniques or improvement of existing control technologies (herein, ''new technology measures'') if the state has submitted enforceable commitments to develop and adopt contingency measures (herein, ''section 182(e)(5) contingency measures'') if the new technology measures do not achieve planned reductions. The section 182(e)(5) contingency measures must be submitted to the EPA as a SIP revision no later than 3 years before implementation of the plan provisions (*i.e.,* three years before the attainment year on which the attainment demonstration is based), and the section 182(e)(5) contingency measures must be adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to attain the ozone NAAQS by the applicable attainment date.

In 2014, the EPA approved the attainment demonstration for the 1-hour ozone NAAQS for the South Coast in the ''Final 2012 Air Quality Management Plan'' (''2012 AQMP'').[23] The 1-hour ozone attainment demonstration in the 2012 AQMP relied upon new technology measures to achieve emissions reductions of 17 tons per day (tpd) of VOC and 150 tpd of $NO_X$ in the South Coast by January 1, 2022. The new technology measures in the 2012 AQMP were supported by a commitment by CARB to submit section 182(e)(5) contingency measures by January 1, 2019, as necessary to ensure that the emissions reductions from new technology measures are achieved.

The 2016 AQMP and 1-Hour Ozone Update revise the attainment demonstration for the 1-hour ozone NAAQS for the South Coast to reflect updated emissions inventories, photochemical modeling, and control strategy. In adopting the 1-Hour Ozone Update, CARB found that the 1-Hour Ozone Update demonstrates that identified District control measures will achieve the emissions reductions needed for attainment of the 1-hour ozone NAAQS by 2022 without additional reductions from new technology measures and that section 182(e)(5) requirements no longer apply to the South Coast for the 1-hour ozone NAAQS.[24]

[19] 55 FR 28624 (July 12, 1990).

[20] District Rule 1117, paragraphs (d)(5) and (d)(6).

[21] See 28162 from the June 17, 2019 proposed rule. The term ''RFP contingency measure'' refers to contingency measures to take effect if an area fails to meet an RFP milestone as required by CAA section 182(c)(9). RFP contingency measure is used to distinguish contingency measures to address failures to meet an RFP milestone from ''attainment contingency measures'' that are intended to address a failure by an area to attain the NAAQS by the applicable attainment date as required by CAA section 172(c)(9).

[22] Letters dated January 29, 2019 and May 2, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB.

[23] 79 FR 52526 (September 3, 2014).

[24] CARB Resolution 18–55, December 13, 2018, 4.

The District control measures to which CARB refers are included in the District's aggregate emissions reduction commitments through which the District commits to develop, adopt, submit and implement certain ozone measures to achieve emissions reductions in the aggregate of 20.6 tpd of $NO_X$ and 6.1 tpd of VOC by 2022.[25] The District's aggregate emissions reduction commitment in the 2016 AQMP (to take certain actions and achieve reductions of 20.6 tpd of $NO_X$ and 6.1 tpd of VOC by 2022) fills the gap between the 2022 adjusted baseline emissions level (that reflects already-adopted measures) and 2022 modeled attainment emissions level for the 1-hour ozone NAAQS.[26] Thus, there is no further need to rely on new technology measures, and thus, no need for the corresponding section 182(e)(5) contingency measures.

In this action, we are approving the updated emissions inventories and photochemical modeling for the 1-hour ozone NAAQS in the 2016 AQMP and 1-Hour Ozone Update, and approving the revised control strategy that has been reset to reflect the updated inventory and modeling results. Again, we are not waiving CARB's commitment to submit section 182(e)(5) contingency measures but, rather, we are approving a SIP revision that provides the technical basis (updated inventories and photochemical modeling) demonstrating that no such contingency measures are needed because the control strategy no longer relies on new technology measures. In effect, our approval of the updated 1-hour ozone attainment demonstration in the 2016 AQMP and 1-Hour Ozone Update replaces the enforceable commitment by CARB to submit section 182(e)(5) contingency measures with an enforceable commitment by the District to take certain actions and achieve certain emissions reductions by 2022. We note that the enforceable commitments made by the District through adoption of the 2016 AQMP are similar to the enforceable commitments that the EPA has approved as part of attainment demonstrations in previous California air quality plans and that have withstood legal challenge.[27]

Lastly, we disagree with CCAEJ's assertion that it is not possible to determine at this point in time whether the new technology measures approved as part of the 2012 AQMP have achieved the necessary emissions reductions because that determination cannot be made until the 2022 deadline. Under these circumstances, the CAA requires an accounting of the remaining reductions to be achieved by new technology measures three years prior to attainment. In this case, the accounting had to have been submitted by 2019 to determine the extent to which section 182(e)(5) contingency measures are needed, which is why it was necessary for CARB to commit to submitting section 182(e)(5) contingency measures (as needed) by 2019. The updated 1-hour ozone attainment demonstration in the 2016 AQMP and 1-Hour Ozone Update provide the accounting of the remaining emissions reductions necessary to attain the 1-hour ozone NAAQS by 2022, and based on that analysis, CARB concludes that emissions reductions from new technology measures are no longer needed, given that the District's aggregate emissions reduction commitment of 20.6 tpd of $NO_X$ and 6.1 tpd of VOC by 2022 will close the gap between the 2022 baseline emissions level (reflecting adopted measures) and the 2022 modeled attainment emissions level.[28]

*Comment #4:* Citing evidence of climate change from various sources, including sources published by the EPA, CARB, and the SCAQMD, CCAEJ asserts that the 2016 South Coast Ozone SIP fails to meet CAA requirements for attainment demonstrations because the attainment demonstrations for the 1-hour, 1997, and 2008 ozone NAAQS do not account for climate change (increased heat and high heat days). Moreover, CCAEJ asserts that the failure to account for climate change calls into question all the weight of evidence conclusions because evidence of increased difficulties in meeting ozone standards has been excluded from the analysis.

*Response #4:* We acknowledge that the attainment demonstrations in the 2016 South Coast Ozone SIP do not explicitly account for potential climate change impacts. Although EPA modeling guidance acknowledges the potential effect of climate change on ozone levels,[29] the EPA does not recommend that air agencies need to explicitly account for long-term climate change in attainment demonstrations. The guidance states that ''there are significant uncertainties regarding the precise location and timing of climate change impacts on air quality. Generally, climate projections are more robust for periods at least several decades in the future because the forcing mechanisms that drive near-term natural variability in climate patterns (*e.g.,* El Nino, North American Oscillation) have substantially larger signals over short time spans than the driving forces related to long-term climate change. In contrast, projections for SIP purposes are generally for time spans of less than 20 years. Given the relatively short time span between base and future year meteorology in most SIP demonstrations, the EPA does not recommend that air agencies explicitly account for long-term climate change in attainment demonstrations.'' [30] In contrast, the time spans between base and future year meteorology in the 2016 AQMP (year 2012) [31] and the modeled attainment years are 10, 11, and 19 years for the 1-hour, 1997, and 2008 ozone NAAQS, respectively. The attainment demonstrations in the 2016 South Coast Ozone SIP are thus consistent with our guidance in this respect, and we find that the failure to account for potential climate change in the attainment demonstrations does not undermine our approval of them. The same is true for the weight of evidence model runs (presented in chapter 5 of appendix V of the 2016 AQMP) that are also based on 2012 meteorology.

We note that our modeling guidance states that air agencies are welcome to consider potential climate impacts in their specific areas, especially where and when there is evidence of significant potential impacts,[32] and the SCAQMD has issued a request for proposals to evaluate meteorological factors and trends contributing to recent poor air quality in the South Coast.[33] The information that will be developed

[25] See the proposed rule at 28145–28147 for a detailed description of the District's aggregate emissions reduction commitments.

[26] See table 9 from the proposed rule—page 28151–28152.

[27] See *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015) (approval of state commitments to propose and adopt emissions control measures and to achieve aggregate emissions reductions for San Joaquin Valley ozone and particulate matter plans upheld); *Physicians for Social Responsibility—Los Angeles* v. *EPA,* 9th Cir., memorandum opinion issued July 25, 2016 (approval of air district commitments to propose and adopt measures and to achieve aggregate emissions reductions for South Coast 1-hour ozone plan upheld).

[28] Table 3 of the June 17, 2019 proposed rule (84 FR 28132, at 28146) shows the District's stationary and mobile source measures that are expected to achieve the District's 2022 aggregate emissions reduction commitment.

[29] EPA, Office of Air Quality Planning and Standards, Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, EPA 454/R–18–009, November 2018 (''Final Modeling Guidance''), 31–32.

[30] Final Modeling Guidance, page 32.

[31] 2016 AQMP, appendix V (''Modeling and Attainment Demonstration''), page V–1–1.

[32] Final Modeling Guidance, page 32.

[33] SCAQMD Board Meeting, November 2, 2018, Agenda No. 9, Proposal: Issue RFP to Evaluate Metrological Factors and Trends Contributing to Recent Poor Air Quality in South Coast Air Basin.

through this study, while too late to inform development of the 2016 AQMP, may inform development of future AQMPs.

*Comment #5:* CCAEJ asserts that the EPA's proposed conditional approval as a contingency measure of CARB's commitment to submit a contingency measure developed and adopted by the District, or as referred to by CCAEJ as ''CARB's plan to adopt a plan,'' is inconsistent with the *Bahr* decision and violates the CAA. More specifically, CCAEJ objects to the contingency measure commitment by CARB because it would not provide for one year's worth of progress; because the commitment to submit a contingency measure will not be federally enforceable; because CARB has only submitted a plan to adopt a plan and thus the EPA has no basis to evaluate whether the contingency measure provides emissions reductions that are quantifiable, enforceable, permanent and surplus; and because the contingency measure would not comply with the requirement under the CAA that contingency measures take effect without further action by the state or the EPA.

*Response #5:* We did not propose to conditionally approve CARB's commitment to submit a revised District rule (to include contingent provisions to be triggered by a failure to meet an RFP milestone) as a contingency measure. We proposed to conditionally approve the RFP contingency measure element of the 2016 South Coast Ozone SIP that includes the emissions analysis from the 2018 SIP Update documenting how the measure (once adopted, submitted and approved) would be sufficient to meet the RFP contingency measure requirement in CAA sections 172(c)(9) and 182(c)(9) and that will include the yet-to-be-submitted District rule contingency measure. CARB's commitment to submit such a revised District rule is not itself part of the contingency measure element, but is the basis, in part, of our proposing conditional approval under CAA section 110(k)(4).

Under CAA section 110(k)(4), the EPA may conditionally approve a SIP revision based on a state commitment to adopt specific enforceable measures by a date certain, but no later than 1 year after the date of the final conditional approval. Section 110(k)(4) does not require that the state submit the commitment as a SIP revision. We believe that the District's commitment to revise a rule or rules, or adopt a new rule or rules, to include provisions to eliminate exemptions or reduce emissions limits upon an EPA determination that the South Coast has failed to meet an RFP milestone, and CARB's commitment to submit the revised District rule within 1 year of final conditional approval, to be a sufficient basis to conditionally approve the contingency measure element of the 2016 South Coast Ozone SIP. Section 110(k)(4) also provides that conditional approvals shall be treated as disapprovals if the state fails to comply with the commitments made.

We acknowledge that, because CARB's commitment to submit a revised District rule will not be approved into the SIP, it will not be federally enforceable. However, as noted above, CAA section 110(k)(4) authorizes the EPA under certain circumstances to conditionally approve a SIP revision based on commitments that are not part of the SIP. Instead of a potential lawsuit for failure to fulfill a SIP obligation, the consequence for a state's failure to meet a commitment relied upon for conditional approval is that the conditional approval (in this case, of the contingency measure element) becomes a disapproval that triggers sanctions clocks under CAA section 179(a) and 40 CFR 52.31.

We also acknowledge that we cannot at the present time evaluate whether the contingency measure (*i.e.,* the yet to be revised District rule including contingency provisions) meets the various criteria for approvable control measures in general—such as quantifiable, enforceable, permanent and surplus. This circumstance, however, arises whenever the EPA issues a conditional approval of a SIP revision. In all such cases, the EPA cannot judge definitively, at the time of the conditional approval, whether the SIP revision that a state will later submit (within one year of the conditional approval) will adequately remedy the deficiency that prevents full approval of the original SIP revision. In such circumstances, the EPA evaluates the commitment of the state to determine whether the submission, if consistent with the commitment, will be likely to resolve the deficiency. In this case, the deficiency in the RFP contingency measure element is the absence of a specific measure that will reduce emissions in the event that the South Coast fails to meet an RFP milestone for the 2008 ozone NAAQS and that, once triggered, will take effect without significant further action by the state or the EPA and will thereby meet the requirements of CAA sections 172(c)(9) and 182(c)(9) consistent with the *Bahr* decision.

Once the District fulfills its commitment (*i.e.,* to revise a rule, or adopt a new rule, to include contingent provisions), and CARB submits the revised rule as a SIP revision (within one year of final conditional approval), then the EPA will evaluate the rule and take appropriate action to propose approval or disapproval of the rule for compliance with the general criteria for approvability as well as the specific criteria set forth in CAA sections 172(c)(9) and 182(c)(9) for RFP contingency measures. The public will then have the opportunity to comment on the EPA's proposed action on the submitted rule.

As noted in our June 17, 2019 proposed rule, we believe that the specific types of revisions the District has committed to make, such as increasing the stringency of an existing requirement or removing an exemption, upon an RFP milestone failure would comply with the requirements in CAA sections 172(c)(9) and 182(c)(9) because they would be undertaken if the area fails to meet an RFP milestone and would take effect without significant further action by the state or the EPA.[34] However, if we find that the contingency measure SIP revision fails to meet the applicable requirements, then we would issue a disapproval, and a disapproval would trigger sanctions clocks under CAA section 179(a) and 40 CFR 52.31.

Lastly, we acknowledge that it is unlikely that the RFP contingency measure, once adopted by the District, will achieve the equivalent of one year's worth of progress in the South Coast, but we do not believe that an RFP contingency measure in the South Coast must achieve one year's worth of progress given the extent to which future baseline emissions in the South Coast exceed the RFP milestones for the area. First, we note that neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve. Rather, the EPA has recommended in guidance that contingency measures should provide emissions reductions approximately equivalent to one year's worth of RFP, which, with respect to ozone in the South Coast ozone nonattainment area, amounts to approximately 16 tpd of VOC or $NO_X$ reductions.[35]

In making the recommendation that contingency measures achieve one year's worth of RFP, the EPA has considered the overarching purpose of such measures in the context of attainment planning. The purpose of

[34] 84 FR 28132, at 28162–28163 (June 17, 2019).

[35] 84 FR 28132, at 28162 (June 17, 2019).

emissions reductions from implementation of contingency measures is to ensure that, in the event of a failure to meet an RFP milestone or a failure to attain the NAAQS by the applicable attainment date, the state will continue to make progress toward attainment at a rate similar to that specified under the RFP requirements. The state will achieve the reductions from the contingency measures while conducting additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan.[36] The facts and circumstances of a given nonattainment area may justify larger or smaller amounts of emissions reductions.

The EPA has also interpreted the Act to allow already-implemented measures to qualify as contingency measures so long as the emissions reductions from such measures are surplus to those necessary for RFP or attainment. In light of the *Bahr* decision, already-implemented measures no longer qualify as contingency measures for SIP purposes in the states located within the jurisdiction of the Ninth Circuit Court of Appeals. Thus, in the states affected by the *Bahr* decision, the EPA evaluates contingency measure SIP elements to determine whether they include contingency measures that are structured to meet the statutory requirements set forth in CAA sections 172(c)(9) and 182(c)(9) (*e.g.,* structured to take effect prospectively in the event of a failure to achieve an RFP milestone or to attain by the applicable attainment date). The EPA also evaluates whether the contingency measure or measures would provide emissions reductions that, when considered with surplus emissions reductions from already-implemented measures or other extenuating circumstances, ensure sufficient continued progress in the event of a failure to achieve an RFP milestone or to attain the ozone NAAQS by the applicable attainment date. We continue to evaluate the sufficiency of continued progress that will result from contingency measures in light of our guidance, but in appropriate circumstances, do not believe that the contingency measures themselves must provide for one year's worth of RFP. Such appropriate circumstances include where sufficient progress would be maintained by the contingency measures and surplus emissions reductions from other sources while the state conducts additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan. In other words, if there are additional emissions reductions projected to occur that a state has not relied upon for purposes of RFP or attainment or to meet other nonattainment plan requirements, and that result from measures the state has not adopted as contingency measures, then those reductions may support EPA approval of contingency measures identified by the state even if they would result in less than one year's worth of RFP in appropriate circumstances.

In this instance, the RFP contingency measure element of the 2016 AQMP, as modified by the 2018 SIP Update, and supplemented by the commitments to adopt and submit a local contingency measure, relies upon a to-be-adopted District contingency measure. In our proposed rule, we indicated that the District had not provided an estimate of the emissions reductions from the to-be-adopted District contingency measure, but that we assume that the emissions reductions may not achieve one year's worth of RFP given the types of rule revisions under consideration and the magnitude of emissions reductions constituting one year's worth of RFP in the South Coast. As to whether the contingency measure, once adopted, would provide for sufficient continued progress in the event of a failure to achieve an RFP milestone, we reviewed the documentation provided in the 2018 SIP Update of ''surplus'' (*i.e.,* emissions reductions over and above the reductions necessary to demonstrate RFP in the South Coast nonattainment area) reductions from CARB's already-adopted mobile source control program in the RFP milestone years. For the South Coast nonattainment area, CARB's estimates of ''surplus'' reductions in the various RFP milestones years (ranging from 168 tpd to 262 tpd of $NO_X$) provide the factual basis for us to conclude that the to-be-adopted District contingency measure need not in itself achieve one year's worth of RFP.[37]

We anticipate that the emissions reductions from the contingency measure or measures ultimately adopted by the District will be sufficient, although they may achieve less than 16 tpd (*i.e.,* one year's worth of RFP), because already-implemented measures (although not relied upon directly to meet the statutory contingency measure requirement) will ensure sufficient continued progress in the event of a failure to achieve an RFP milestone. Therefore, even though we do not know the extent of emissions reductions from the to-be-adopted contingency measure, we consider the contingency measure to be sufficient to remedy the deficiency in the contingency measure element of the 2016 South Coast Ozone SIP.

## IV. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve as a revision to the California SIP the following portions of the 2016 South Coast Ozone SIP submitted by CARB on April 27, 2017, December 5, 2018, December 20, 2018, and August 5, 2019:

- Base year emissions inventory element in the 2016 AQMP as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS;
- Emissions statement element, including District Rule 301 (''Permitting and Associated Fees'') (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)), as amended by the District on July 12, 2019, as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- RACM demonstration element in the 2016 AQMP as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS;
- Updated attainment demonstration element for the revoked 1-hour ozone NAAQS in the 2016 AQMP and the 1-Hour Ozone Update as meeting the requirements of CAA section 182(c)(2)(A);[38]
- Updated attainment demonstration element for the revoked 1997 ozone NAAQS in the 2016 AQMP as meeting the requirements of CAA section 182(c)(2)(A);
- Attainment demonstration element for the 2008 ozone NAAQS in the 2016 AQMP as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- SCAQMD's commitments in the 2016 AQMP and District Resolution 17–

[36] 57 FR 13498, at 13512 (April 16, 1992).

[37] 2018 SIP Update, 65. The estimate of the RFP milestone surplus as ranging from 168 tpd to 262 tpd of $NO_X$ is based on the 2018 SIP Update estimate of surplus in terms of percentages (range of 31.5 percent to 47.2 percent) times the 2011 baseline $NO_X$ emissions level of 534.2 tpd.

[38] Because the 1-hour ozone attainment demonstration in the 1-Hour Ozone Update does not rely on advanced control technology measures under CAA section 182(e)(5), final approval of the attainment demonstration in the 1-Hour Ozone Update would fulfill CARB's commitment, in adopting the 2012 AQMP, to achieve by January 1, 2022, aggregate emissions reductions from advanced control technology measures under CAA section 182(e)(5) or actual emissions decreases that occur and to develop, adopt and submit contingency measures by 2019 if advanced control technology measures do not achieve planned reductions.

2 to adopt, submit, and implement certain defined measures, as listed in tables 4–2 and 4–4 of Chapter 4 in the 2016 AQMP, and to achieve specific aggregate emissions reductions (shown in tables 4–9 through 4–11 of the 2016 AQMP) by 2022, 2023 and 2031 for the 1-hour ozone NAAQS, 1997 ozone NAAQS, and 2008 ozone NAAQS, respectively, and to substitute any other measures as necessary to make up any emissions reduction shortfall; [39]

• CARB's commitments in the 2016 State Strategy and CARB Resolution 17–7 to bring to the CARB Board for consideration the list of proposed SIP measures outlined in the 2016 State Strategy and included in attachment A (to Resolution 17–7) according to the schedule set forth in attachment A, and to achieve the aggregate emissions reductions in the South Coast of 113 tpd of $NO_X$ and 50 to 51 tpd of VOC by 2023 for the 1997 ozone NAAQS, and 111 tpd of $NO_X$ and 59 to 60 tpd of VOC by 2031 for the 2008 ozone NAAQS; [40]

• The provisions in the 2016 State Strategy for the development of new technology measures for attainment of the 1997 ozone NAAQS and 2008 ozone NAAQS in the South Coast pursuant to CAA section 182(e)(5), and CARB's commitment in Resolution 17–8 to adopt and submit by 2028 contingency measures to be implemented if the new technology measures do not achieve the planned emissions reductions for the 2008 ozone NAAQS, as well as attainment contingency measures meeting the requirements of CAA section 172(c)(9); [41]

• ROP demonstration element in the 2016 AQMP as meeting the requirements of CAA 182(b)(1) and 40 CFR 51.1110(a)(2) for the 2008 ozone NAAQS;

• RFP demonstration element in the 2018 SIP Update as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS;

• VMT emissions offset demonstration element in the 2016 AQMP as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1102 for the 2008 ozone NAAQS;

• Clean fuels or advanced control technology for boilers element in the 2016 AQMP as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS;

• Motor vehicle emissions budgets in the 2018 SIP Update for the RFP milestone years of 2020, 2023, 2026, 2029, and the attainment year of 2031, as shown below, because they are consistent with the RFP and attainment demonstrations for the 2008 ozone NAAQS finalized for approval herein and meet the other criteria in 40 CFR 93.118(e);

TRANSPORTATION CONFORMITY BUDGETS FOR THE 2008 OZONE NAAQS IN THE SOUTH COAST

[Summer planning inventory, tpd]

| Budget year | VOC | $NO_X$ |
|---|---|---|
| 2020 | 80 | 141 |
| 2023 | 68 | 89 |
| 2026 | 60 | 77 |
| 2029 | 54 | 69 |
| 2031 | 50 | 66 |

Source: Table IX–3 of the 2018 SIP Update.

• General conformity budgets of $NO_X$ and VOC of 2.0 tpd of $NO_X$ and 0.5 tpd of VOC (on an annual basis) from 2017 to 2030, and 0.5 tpd of $NO_X$ and 0.2 tpd VOC in 2031, as meeting the requirements of CAA section 176(c) and 40 CFR 93.161;

• Enhanced vehicle inspection and maintenance program element in the 2016 AQMP as meeting the requirements of CAA section 182(c)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS;

• Clean fuels fleet program element in the 2016 AQMP as meeting the requirements of CAA sections 182(c)(4) and 246 and 40 CFR 51.1102 for the 2008 ozone NAAQS; and

• Enhanced monitoring element in the 2016 AQMP as meeting the requirements of CAA section 182(c)(1) and 40 CFR 51.1102 for the 2008 ozone NAAQS.[42]

With respect to the MVEBs, we are taking final action to limit the duration of the approval of the MVEBs to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We are doing so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets [43] prior to our taking final action on the future SIP revision that includes the updated budgets.

Lastly, we are taking final action, under CAA section 110(k)(4), to approve conditionally the contingency measure element of the 2016 South Coast Ozone SIP as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP contingency measures. Our approval is based on commitments by the District and CARB to supplement the element through submission, as a SIP revision (within one year of final conditional approval action), of a new or revised District rule or rules that would include a more stringent requirement or would remove an exemption if an RFP milestone is not met.[44]

## V. Incorporation by Reference

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SCAQMD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at EPA Region IX (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[39] Final approval of SCAQMD's commitments in the 2016 AQMP would update the corresponding commitments made by the District in the 2007 South Coast Ozone SIP for the 1997 ozone NAAQS and in the 2012 AQMP for both the 1997 ozone NAAQS and the 1-hour ozone NAAQS.

[40] Final approval of CARB's commitments in the 2016 State Strategy for the South Coast would update the corresponding commitments by CARB in the 2007 South Coast Ozone SIP for the 1997 ozone NAAQS.

[41] For the purposes of the 2007 South Coast Ozone SIP, CARB committed to develop, adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions for the 1997 ozone NAAQS, as well as additional attainment contingency measures meeting the requirements of CAA section 172(c)(9). The EPA approved that commitment at 77 FR 12674, 12695 (March 1, 2012). CARB's pre-existing commitments with respect to section 182(e)(5) and section 172(c)(9) attainment contingency measures for the South Coast for the 1997 ozone NAAQS are not affected by today's final action on the 2016 South Coast Ozone SIP.

[42] Regarding other applicable requirements for the 2008 ozone NAAQS in the South Coast, the EPA has previously approved SIP revisions that address the nonattainment area requirements for NSR and for implementation of RACT for the South Coast for the 2008 ozone NAAQS. See 83 FR 64026 (December 13, 2018) (NSR) and 82 FR 43850 (September 20, 2017) (RACT). SIP revisions for the South Coast addressing the penalty fee requirements under CAA sections 181(d)(4) and 185 are not yet due for the 2008 ozone NAAQS.

[43] On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. See 84 FR 41717.

[44] Letter dated January 29, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB; and letter dated February 13, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Mike Stoker, Regional Administrator, EPA Region IX. Also see letter dated May 2, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB; and letter dated May 20, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.

## VI. 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 action merely approves, or conditionally approves, state plans as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, 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.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(514)(ii)(A)(*3*), (c)(517)(ii)(A)(*3*) through (*6*), (c)(517)(ii)(B)(*4*) and (*5*), and (c)(525) and (526) to read as follows:

### § 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(514) * * *

(ii) * * *

(A) * * *

(*3*) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, excluding chapters II through VIII, and chapter X, and excluding pages A–3 through A–30 of appendix A (''Nonattainment Area Inventories'').

* * * * *

(517) * * *

(ii) * * *

(A) * * *

(*3*) Resolution 17–7, 2016 State Strategy for the State Implementation Plan, March 23, 2017, commitments to a rulemaking schedule; to achieve aggregate emissions reductions of 113 tons per day (tpd) of $NO_X$ and 50 to 51 tpd of VOC in the South Coast by 2023, and 111 tpd of $NO_X$ and 59 to 60 tpd of VOC in the South Coast by 2031; and the rulemaking schedule included in attachment A to Resolution 17–7, only.

(*4*) Revised Proposed 2016 State Strategy for the State Implementation Plan, adopted on March 23, 2017, subchapter titled ''South Coast Commitment'' in chapter 3 (''Proposed SIP Commitment'').

(*5*) Resolution 17–8, 2016 Air Quality Management Plan for Ozone and $PM_{2.5}$ in the South Coast Air Basin and the Coachella Valley, March 23, 2017, commitments to develop, adopt, and submit contingency measures by 2028 for the 2008 ozone NAAQS if advanced technology measures do not achieve planned reductions.

(*6*) Letter from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, California Air Resources Board, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX, May 20, 2019, clarification that commitments in Resolution 17–8 to submit contingency measures by 2028 if advanced technology measures do not achieve planned reductions includes a

commitment to submit attainment contingency measures to satisfy the requirements in sections 172(c)(9) and 182(c)(9) of the Clean Air Act, only.

(B) * * *

(*4*) Final 2016 Air Quality Management Plan (March 2017) and appendices, adopted March 3, 2017, excluding the portions of the plan and appendices related solely to $PM_{2.5}$ and Coachella Valley, and excluding the portion of chapter 6 that is titled ''California Clean Air Act Requirements,'' chapter 8 (''Looking Beyond Current Requirements''), chapter 9 (''Air Toxics Control Strategy'') and chapter 10 (''Climate and Energy'').

(*5*) Resolution 17–2, A Resolution of the South Coast Air Quality Management District (SCAQMD or District) Governing Board certifying the Final Program Environmental Impact Report (PEIR) for the 2016 Air Quality Management Plan (AQMP or Plan), and adopting the 2016 AQMP, which is to be submitted into the California State Implementation Plan (SIP), March 3, 2017, commitments to develop, adopt, submit and implement the ozone control measures in tables 4–2 and 4–4 of chapter 4 in the AQMP as expeditiously as possible to meet or exceed the commitments identified in tables 4–9, 4–10 and 4–11 of the AQMP, and to substitute any other measures as necessary to make up any emissions reduction shortfall.

* * * * *

(525) The following plan was submitted on December 20, 2018, by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) South Coast Air Quality Management District.

(*1*) Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration (November 2018), adopted November 2, 2018.

(*2*) [Reserved]

(B) [Reserved]

(526) The following rule was submitted on August 5, 2019, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 301, ''Permitting and Associated Fees'' (paragraphs (e)(1), except (e)(1)(C), (e)(2), (5), and (8) only), amended on July 12, 2019.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

■ 3. Section 52.244 is amended by adding paragraph (a)(8) to read as follows:

**§ 52.244 Motor vehicle emissions budgets.**

* * * * *

(8) South Coast, approved October 31, 2019.

* * * * *

■ 4. Section 52.248 is amended by adding paragraph (h) to read as follows:

**§ 52.248 Identification of plan—conditional approval.**

* * * * *

(h) The EPA is conditionally approving the California State Implementation Plan (SIP) for the South Coast for the 2008 ozone NAAQS with respect to the reasonable further progress (RFP) contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the South Coast Air Quality Management District (District) in a letter dated January 29, 2019, and clarified in a letter dated May 2, 2019, to adopt specific rule revisions, and a commitment from the California Air Resources Board (CARB) dated February 13, 2019 to submit the amended District rule or rules to the EPA within 12 months of the effective date of the final conditional approval. If the District or CARB fail to meet their commitments within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

[FR Doc. 2019–21325 Filed 9–30–19; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 190

**[Docket No. PHMSA–2016–0091; Amdt. No. 190–21]**

**RIN 2137–AF26**

## Pipeline Safety: Enhanced Emergency Order Procedures

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** On October 14, 2016, PHMSA published an interim final rule (IFR) issuing temporary emergency order procedures and requesting public comment. This final rule adopts, with modifications, that IFR implementing the emergency order authority conferred on the Secretary of Transportation (the Secretary) by the ''Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016'' (PIPES Act). These regulations establish procedures for the issuance of emergency orders to address an unsafe condition or practice, or a combination of unsafe conditions or practices, that constitute or cause an imminent hazard to public health and safety or the environment. The regulations describe the duration and scope of such orders and provide a mechanism by which pipeline owners and operators subject to, and aggrieved by, emergency orders can seek administrative or judicial review.

**DATES:** This final rule is effective December 2, 2019.

**FOR FURTHER INFORMATION CONTACT:** James M. Pates, Assistant Chief Counsel for Pipeline Safety, PHMSA, by telephone at (202) 366–0331 or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

#### *A. Purpose of the Regulatory Action*

Section 16 of the PIPES Act (section 16) adds to 49 U.S.C. 60117(o) by establishing a new emergency order authority for the Secretary [1] in the area of pipeline safety. In section 16, Congress directed PHMSA to develop procedures for the issuance of emergency orders to address unsafe conditions or practices that constitute or cause an imminent hazard. This new authority augments PHMSA's existing authority (*e.g.,* corrective action orders, safety orders) to address hazardous conditions and pipeline integrity risks by allowing PHMSA to act quickly to address imminent safety hazards that exist across a group of pipeline owners and operators. As required by section 16, on October 14, 2016, PHMSA issued an IFR establishing procedures for the issuance of emergency orders to address unsafe conditions or practices, or a combination of unsafe conditions or practices, that constitute or are causing an imminent hazard. Further, the PIPES Act mandated that PHMSA issue final regulations carrying out section 16 no later than 270 days following enactment of the PIPES Act.

[1] The Secretary has delegated the responsibility to exercise the authority vested in chapter 601 of title 49, U.S.C. to the PHMSA Administrator. *See* 49 CFR 1.97(a).

*B. Summary of the Major Provisions of the Regulatory Action*

Pursuant to section 16, this final rule amends the Federal pipeline safety regulations by establishing procedures to implement the expanded emergency order enforcement authority set forth in the IFR. These procedures will apply only when PHMSA determines that an unsafe condition or practice constitutes or is causing an imminent hazard. PHMSA may issue an emergency order without advance notice or opportunity for a hearing. Additionally, PHMSA may impose emergency restrictions, prohibitions, or other safety measures on owners and operators of gas or hazardous liquid pipeline facilities, but only to the extent necessary to abate the imminent hazard. Based on comments received from industry and the public, several provisions in the IFR have been modified or clarified by this final rule.

*C. Cost and Benefit*

By implementing this statutory mandate, PHMSA will enhance its existing enforcement authority to respond immediately to conditions or practices that exist in the pipeline industry or a subset thereof. This final rule solely affects agency enforcement procedures to implement the emergency order provisions of the law; therefore, this rulemaking results in no additional burden or compliance costs to industry.

**II. Background**

*A. Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016*

On June 22, 2016, the President signed the PIPES Act (Pub. L. 114–183, 130 Stat. 514), which amended the Pipeline Safety Laws in chapter 601 of title 49, United States Code. Congress enacted section 16 to permit PHMSA to address conditions or practices that extend beyond or affect more than a single pipeline owner or operator, and which must be addressed immediately to protect life, property, or the environment. Section 60117(o) authorizes PHMSA to issue an emergency order if it determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard. Under this section, an emergency order may impose emergency restrictions, prohibitions, or other safety measures on owners and operators of gas or hazardous liquid pipeline facilities, without prior notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard. This regulatory authority allows PHMSA to impose conditions on a group of pipeline owners and operators, facilities, or systems, in accordance with the statutorily-mandated procedures outlined in the PIPES Act and this final rule.

*B. Current Authorities: Corrective Action Orders and Safety Orders*

1. Corrective Action Orders

Section 60112 of title 49 provides for the issuance of a corrective action order (CAO) to the owner or operator of a pipeline facility if the agency finds that operation of a pipeline facility is or would be hazardous to life, property, or the environment. Prior to issuing a CAO, the Associate Administrator for Pipeline Safety (the Associate Administrator) must consider the following factors, if relevant:

(a) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(b) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(c) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(d) Any recommendation of the National Transportation Safety Board (NTSB) issued in conjunction with any investigations conducted by the NTSB; and

(e) Such other factors as the Associate Administrator may consider appropriate.

After weighing these factors and finding that a particular facility is or would be hazardous to life, property, or the environment, the Associate Administrator may order the suspended or restricted use of a pipeline facility, physical inspection, testing, repair, replacement, or other appropriate action. Furthermore, if the Associate Administrator determines that the failure to issue the order expeditiously would result in the likelihood of serious harm to life, property, or the environment, the CAO may be issued without prior notice and an opportunity for a hearing. In such cases, the affected owner or operator must be provided with the opportunity for a hearing and ''expedited review'' as soon as practicable following issuance of the CAO. Historically, PHMSA has used CAOs to address a single owner, operator, or pipeline facility.

2. Safety Orders

Similarly, section 60117 provides for the issuance of a notice of proposed safety order (NOPSO) to the owner or operator of a pipeline facility where the agency finds that a particular pipeline facility has a condition or conditions that pose an integrity risk to public safety, property, or the environment that may not require immediate corrective action but needs to be addressed over time. The NOPSO proposes specific measures that an operator must take to address the identified risk, which may include physical inspections, testing, repairs, or other appropriate actions to remedy the identified risk or condition. A NOPSO addresses pipeline integrity risks that may require the owner or operator to take immediate corrective actions or risks that must be addressed over a longer period. Historically, these orders have likewise been issued to a single owner, operator, or pipeline facility and are not intended to address imminent safety or environmental hazards.

*C. Hazardous Materials Emergency Order Authority*

In addition to its authorities granted under chapter 601, title 49 of the United States Code, PHMSA conducts a separate regulatory program governing the transportation of hazardous materials by means other than pipelines (*e.g.,* rail, air). Under the statute governing the safe transportation of hazardous materials, 49 U.S.C. chapter 51, as amended by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA; Pub. L. 109–59; August 10, 2005), expanded the Secretary's inspection authority for hazardous materials transportation, as well as investigation and enforcement authority. Prior to the enactment of HMTSSRA, DOT could only obtain relief against a hazardous-materials safety violation posing an imminent hazard through a court order. After finding such a threat, the applicable DOT operating administration (*e.g.,* Federal Railroad Administration, PHMSA) was required to enlist the Department of Justice to file a civil action against the offending party and seek a restraining order or preliminary injunction. As a practical matter, judicial relief could rarely be obtained

before the hazardous materials transportation had been completed.

On March 2, 2011, PHMSA published a final rule, titled ''Hazardous Materials: Enhanced Enforcement Authority Procedures,'' (76 FR 11570), to remedy this problem. The hazardous materials regulations, codified at 49 CFR 109.17 and 109.19, allow PHMSA to issue emergency orders to abate unsafe conditions or practices posing an imminent hazard related to the transportation of hazardous materials, and include streamlined administrative remedies that materially enhanced PHMSA's ability to prevent the unsafe movement of hazardous materials. Section 16 of the PIPES Act directs the Secretary to adopt a review process for pipeline emergency orders that contains the same procedures as those in 49 CFR 109.19(d) and (g) and that is ''otherwise consistent with the review process developed under [49 CFR 109.19], to the greatest extent practicable and not inconsistent with this section.'' As a result, this final rule is modeled in many respects after the enhanced authority conferred by HMTSSRA and contained in 49 CFR 109.19.

*D. Need for Enhanced Emergency Order Authority for Pipelines*

While the CAO has proven to be an effective tool to address a particular pipeline operator's hazardous facility, no enforcement vehicle existed, prior to passage of the PIPES Act, that would allow PHMSA to address immediate safety threats facing the wider pipeline industry. This new enforcement tool enables the PHMSA Administrator (the Administrator) to issue an emergency order prohibiting an unsafe condition or practice and imposing affirmative safety measures when an unsafe condition, practice, or other activity constitutes or is causing an imminent hazard to life, property or the environment. The emergency order authority conferred by the PIPES Act is intended to serve as a flexible enforcement tool that can be used in emergency situations to address time-sensitive safety conditions affecting multiple owners or operators, facilities, or systems that present an imminent hazard. Unlike a CAO or NOPSO issued to a single operator, an emergency order affects multiple or all operators and pipeline systems that share a common characteristic or condition.

A variety of circumstances could warrant the issuance of an emergency order, including: (1) Where a natural disaster affects many pipelines in a specific geographic region; (2) where a serious flaw has been discovered in pipe, equipment manufacturing, or supplier materials; and (3) where an accident reveals that a specific industry practice is unsafe and needs immediate or temporary correction. This list is not intended to be exhaustive. PHMSA will examine the specific facts in each situation to determine if an imminent hazard exists and will tailor each emergency order to address the specific imminent hazard under the circumstances presented while observing the statutorily-mandated due process procedures.

*E. Interim Final Rule*

On October 14, 2016, PHMSA issued an IFR adopting temporary regulations governing emergency orders. The IFR implemented the authority conferred by the PIPES Act that allowed PHMSA to issue an emergency order without prior notice or an opportunity for a hearing when an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard. PHMSA simply adopted the statutory definition of ''Imminent hazard'' found in section 16, namely, the existence of a condition relating to one or more pipeline facilities that ''presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment.''

In the IFR, PHMSA followed the statutory language in section 16 to provide that, before issuing an emergency order, the agency must consider its potential impact on the public health and safety, on the national or regional economy, or national security, as well as the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers. As part of this deliberative process, PHMSA shall ''consult, as the [Administrator] determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.''

The IFR also provided that any entity subject to, and aggrieved by, an emergency order would have the right to file a petition for review with PHMSA to determine whether the order should remain in effect, be modified, or be terminated. If the agency does not reach a decision with respect to the petition before the end of a 30-day review period (beginning when the petition is filed), the order will cease to be effective unless the Administrator determines in writing, on or before the last day of the review period, that the imminent hazard still exists.

## III. Summary and Response to Comments

PHMSA received eight comments from pipeline trade associations, pipeline operators, and citizens.

List of Commenters:

1. American Fuel & Petrochemical Manufacturers (AFPM)
2. The American Gas Association (AGA)
3. The American Petroleum Institute and the Association of Oil Pipe Lines (API/AOPL)
4. Chaparral Energy, Inc. (Chaparral)
5. GPA Midstream Association (GPA)
6. Interstate Natural Gas Association of America (INGAA)
7. ONEOK Partners, L.P. (ONEOK)
8. Peter Miller

*General Comments*

Most of the comments were generally supportive of the IFR. AFPM, AGA, API/AOPL, and INGAA were concerned, however, about the lack of a notice and comment period prior to issuance of the IFR and PHMSA's decision to issue temporary regulations through an IFR. The industry commenters also requested a number of amendments aimed at ensuring various procedural safeguards, including the narrowing of the grounds for issuing emergency orders, guaranteeing the right of every petitioner to secure a formal hearing before an administrative law judge (ALJ), setting more liberal deadlines for filing petitions for reconsideration from the report and recommendation of an ALJ, and requiring personal service of emergency orders. One comment was outside of the scope of the rulemaking because it addressed issues involving pipeline safety generally and did not address the IFR.

*PHMSA Response*

PHMSA believes that issuance of the IFR was the appropriate course of action for PHMSA to take, given the explicit direction from Congress that the Secretary issue temporary regulations within 60 days of enactment of the PIPES Act. However, to obtain meaningful input from the public, PHMSA included a 60-day comment period following issuance of the IFR. This allowed PHMSA to comply with the Congressional mandate to move quickly, while also providing the public with an opportunity to comment on the IFR prior to issuance of a final rule. PHMSA has carefully considered each comment and addressed them in this final rule. Where appropriate, PHMSA has modified the emergency order

regulations in response to public comments.

*Summary of Public Comments on § 190.3, Definitions*

AGA, API/AOPL, INGAA, and ONEOK commented that the definition of ''emergency order'' should be changed to include the limitation contained in section 16 that the emergency restrictions, prohibitions, and safety measures set forth in an order must be imposed ''only to the extent necessary to abate the imminent hazard.'' GPA cited to the statutory definition of ''emergency order'' and stated that it is in agreement with each concern raised by API/AOPL.

Chaparral commented that the phrase ''affected entities'' in the definition of ''emergency order'' be changed to ''respondents'' because ''respondent'' is a defined term under § 190.3, whereas there is no definition in either the statute or the pipeline safety regulations for the term ''affected entities.'' It also stated that the term ''respondent'' is used throughout the Pipeline Safety Enforcement and Regulatory Procedures in 49 CFR part 190 and that its use would therefore be more consistent with the terminology used elsewhere in Part 190. Chaparral further suggested that PHMSA add a new definition for the term ''formal hearing,'' to distinguish it from PHMSA's typical informal enforcement hearings.[2]

AGA suggested that PHMSA modify the definition of the term ''imminent hazard.'' The IFR provides that an imminent hazard exists where there is a substantial likelihood that harm ''may occur before the reasonably foreseeable completion date of a formal administrative proceeding begun to lessen the risk'' of such harm. In a footnote, AGA noted that PHMSA had added the word ''administrative'' to the term ''formal proceeding'' in the definition of ''Imminent hazard'' and requested that it be deleted to be consistent with the definition of ''imminent hazard'' in section 16.

*PHMSA Response*

PHMSA agrees with AGA, API/AOPL, INGAA, and ONEOK that the final rule should make clear that an emergency order may be issued ''only to the extent necessary to abate the imminent hazard.'' Therefore, the final rule amends § 190.236(a) by adding the commenters' suggested language to limit the agency's authority to make a determination that an imminent hazard exists. Because this limiting language more properly affects the authority of PHMSA to make a *finding* of an imminent hazard rather than the *definition* of what constitutes an ''emergency order,'' the definition in § 190.3 has not been changed.

PHMSA believes that this change is appropriate to clarify that an emergency order may not be used as a substitute for notice and comment rulemaking. The PIPES Act distinguishes between emergency order authority, which is intended to address an imminent hazard, and rulemaking activity, making it clear that an emergency order may not be construed to ''alter, amend, or limit the Secretary's obligations under, or the applicability of, [the Administrative Procedure Act.]'' However, PHMSA will consider issuing a regulation through notice and comment rulemaking, if appropriate, based on the unique circumstances that may arise while an emergency order is in effect, or if sufficient time has elapsed and the condition causing the determination of the imminent hazard continues to exist (as discussed below in the ''Summary of Public Comments to Adding § 190.236(e), Emergency Orders, Savings and Limitations'' and in ''IV. Section-by-Section Analysis'' for § 190.236).

Procedural safeguards also exist to protect the rights of operators to challenge PHMSA's determination or to remove an emergency order when an imminent hazard no longer exists, either generally or as to an operator individually based on unique facts or circumstances. The operator may petition for review of an emergency order with PHMSA, and receive final agency action on the emergency order within 30 days. If an operator receives an adverse determination from PHMSA, the operator may seek judicial review.

PHMSA agrees with commenters, for the reasons stated above, that the phrase ''affected entities'' in the definition of ''emergency order'' should be changed to ''owners and operators'' because paragraph (o)(1) of 49 U.S.C. 60117, as amended by the PIPES Act, limits the entities potentially subject to emergency orders to ''owners and operators of gas or hazardous liquid pipeline facilities.'' While Chaparral suggested replacing ''affected entities'' with ''respondents,'' PHMSA thinks the change to ''owners and operators'' is preferable because it is more specific and tracks the language of the PIPES Act.

PHMSA also agrees with commenters that it would be helpful to clarify that a ''formal hearing'' is a formal proceeding on the record conducted by an ALJ in accordance with 5 U.S.C. 554 and should be distinguished from PHMSA's informal adjudications. Therefore, PHMSA is amending § 190.3 to add a definition of the term ''formal hearing'' and to use that term generally to refer to administrative hearings held under the final rule.

As for AGA's comment that the word ''administrative'' should be deleted from the phrase ''formal administrative proceeding'' in the definition of ''imminent hazard,'' PHMSA agrees and has deleted the word ''administrative'' to clarify that a finding of an imminent hazard must be based on a determination that the harm posed by the hazard may occur before the reasonably foreseeable completion date of a formal proceeding, whatever its form, that is brought to lessen the risk of such harm.

*Summary of Public Comments on §§ 190.5, Service, and 190.236(d), Emergency Orders, Service*

AFPM, AGA, API/AOPL, and INGAA commented that emergency orders should not be exempt from PHMSA's general service requirements and that the current service provisions of § 190.5 should not be changed. They also suggested that § 190.236(d) be removed, since it is unnecessary if § 190.5 is unchanged.

AGA and API/AOPL suggested that in addition to personal service, affected operators should be notified in an email distribution sent to all individuals listed as ''Compliance Officers'' and alternate contacts in PHMSA's Operator Identification Contact Management Section of the PHMSA Portal.

*PHMSA Response*

PHMSA agrees with the commenters' suggestion that PHMSA provide personal service of emergency orders to all pipeline operators subject to the orders. Given the importance that operators receive notice of such orders, PHMSA will also provide notice by posting a copy of each order in the **Federal Register** and on the PHMSA website as soon as practicable upon issuance. The intent is to provide the same type of personal service for emergency orders as PHMSA currently provides for other enforcement actions issued under Part 190, plus notice on the PHMSA website and in the **Federal Register**. PHMSA is therefore deleting the amendment of § 190.5 and amending § 190.236(d) to provide that PHMSA will provide personal service of emergency orders, pursuant to § 190.5, to pipeline owners and operators subject to the order, plus general notice by posting the orders on the PHMSA

[2] Chaparral also recommended that PHMSA amend § 190.3 to expressly incorporate the definitions contained in §§ 192.3 and 195.2, as applicable, into Part 190. This comment goes beyond the scope of the final rule and therefore is not addressed.

website and by publication in the **Federal Register**.

Personal service will be consistent with the provisions of the current § 190.5, which states that PHMSA will effectuate personal service by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. Since this is the same personal service that is already provided in other enforcement actions, PHMSA believes that the agency can effectively and expeditiously provide personal service of emergency orders to all affected operators. In addition, every pipeline operator is required to file reports annually with the agency, so PHMSA's database is kept current.

Because PHMSA has changed the final rule to provide personal service to all affected pipeline owners and operators, as suggested by the commenters, and is also providing general notice on PHMSA's website and in the **Federal Register**, PHMSA believes there is no need to adopt the additional suggestion from AGA and API/AOPL that PHMSA notify operators by email sent to all individuals listed as ''Compliance Officers'' and alternate contacts in PHMSA's Operator Identification Contact Management Section. Should affected owners and operators wish to share an emergency order, they may always do so.

*Summary of Public Comments to § 190.236(a), Emergency Orders, Determination of Imminent Hazard*

Section 16 of the PIPES Act provides that when PHMSA issues an emergency order, the order must contain a written description of ''the violation, condition, or practice that constitutes or is causing the imminent hazard.'' AGA, API/AOPL, and INGAA commented that PHMSA does not have the authority under the PIPES Act to issue an emergency order based on a violation of the Federal pipeline safety laws, or a regulation or order prescribed under them. The commenters stated that they do not believe a violation of a pipeline safety law, or regulation or order thereunder, in and of itself, could be a sufficient basis to issue an emergency order. API/AOPL raised due process concerns if an operator does not have prior notice and an opportunity for a hearing before PHMSA finds that a violation has occurred.

*PHMSA Response*

As noted above, the explicit use of the term ''violation'' in section 16 makes clear that a violation of a provision of the Federal pipeline safety laws, or a regulation or order prescribed under those laws, may serve as part of the factual basis for PHMSA determining that a condition or combination of conditions constitutes or is causing an imminent hazard. However, PHMSA does not interpret section 16 to mean that an emergency order would be used either to make an allegation of violation or a finding of violation, since those are addressed through other enforcement mechanisms, primarily notices of probable violation. Instead, PHMSA interprets the use of the term ''violation'' in the final rule to mean that *preliminary* findings of fact, conditions, potential violations, events, or practices that form the legal basis for determining the existence of an imminent hazard may be included as part of the factual basis for issuing an emergency order. PHMSA does not foresee that the factual statements contained in emergency orders will differ from the ''Preliminary Findings'' currently contained in corrective action orders, notices of proposed corrective action orders, and notices of proposed safety orders that serve as the agency's factual basis for declaring a hazardous condition or integrity threat and proposing or imposing corrective actions that operators need to take to address unsafe conditions.

To avoid any implication that emergency orders will be premised on an actual determination or finding of violations of the pipeline safety regulations, PHMSA has revised the introductory language in § 190.236(a) to remove the reference to ''violations'' of Federal pipeline safety laws as stated in the IFR. However, PHMSA is retaining it later in that same paragraph when used to describe the *contents* of an emergency order. This adheres to the statutory language in section 16 and makes a distinction between the alleged preliminary findings of fact that serve as the legal basis for issuing an order and what the order actually determines or requires.

PHMSA emphasizes that this revision does not affect its authority to issue an emergency order where a violation of the pipeline safety regulations may have occurred or to make *preliminary* findings of fact that describe the conditions giving rise to an imminent hazard.[3] Potential violations of Federal pipeline safety laws can result in unsafe conditions or practices that are so serious that they can serve to constitute part of the factual basis for issuing an emergency order. It would be unwise and contrary to the language of the statute to suggest that the use of the facts underlying potential violations is beyond PHMSA's authority. PHMSA also emphasizes that issuance of an emergency order does not preclude the agency from pursuing a violation through other means, including a notice of probable violation, separate from the emergency order process.

PHMSA is also correcting two typographical errors contained in this section. Neither change is substantive.

*Summary of Public Comments to § 190.236(b), Emergency Orders, Consultation Requirement*

AFPM commented that the IFR language does not include details concerning PHMSA's contemplated approach for carrying out the requirement in section 16 that PHMSA consult with appropriate Federal agencies, State authorities, and other entities knowledgeable in pipeline safety or operations before deciding whether to issue an emergency order. It requests that PHMSA provide clarification on its intended approach for such ''pre-order'' consultations, ''including categories of experts within State and Federal authorities [PHMSA] would expect to engage in pre-order consultation and consideration.''

INGAA requested clarification that section 16 actually requires PHMSA to consult with appropriate Federal and state agencies and ''other entities knowledgeable in pipeline safety or operations'' and that PHMSA's discretion was limited ''only as to what agencies are consulted and to what extent those agencies are consulted,'' not whether to consult at all. INGAA stated that the PIPES Act explicitly mandates that such consultations take place and further suggested that ''it would be appropriate, if not imperative, for the Administrator to consult with certain agencies in almost every conceivable situation.'' For example, INGAA suggested that for any emergency order issued to a Federal Energy Regulatory Commission (FERC)-regulated pipeline, FERC should be consulted at a minimum for potential impacts on energy reliability. Additionally, INGAA proposed that the Department of Energy be an appropriate consulting agency in some cases due to its overarching interest in energy policy and electric reliability.

*PHMSA Response*

PHMSA declines to adopt AFPM's suggestion that the agency provide

[3] This has traditionally been PHMSA's practice in issuing corrective action orders (CAOs), where the agency recites preliminary findings that describe what is currently known about the facts and circumstances surrounding an accident and that are subject to change as the accident investigation continues.

greater detail as to how and when PHMSA will engage in consultations with various agencies and stakeholders before issuing an emergency order. PHMSA believes that the statute clearly provides that PHMSA should engage in consultations with knowledgeable entities, including State and Federal agencies, before issuing an order, except that PHMSA has been granted the discretion to determine when consultations are ''appropriate,'' including the exigent circumstances upon which the emergency order is based. PHMSA believes it would be inefficient, inflexible, and contrary to the statutory language to identify specific procedures or entities that must be consulted in every instance, given the unique circumstances under which PHMSA is likely to consider issuance of an emergency order.

As suggested by commenters, PHMSA is amending the title to the subsection to clarify that it is not delineating a formal consultation process.

*Summary of Public Comments To Adding § 190.236(e), Emergency Orders, Savings and Limitations*

INGAA commented that PHMSA ''must'' add a paragraph (e) to § 190.236 to include a Savings and Limitations Clause, since a similar provision is contained in section 16. INGAA provided proposed language that followed the statutory language, stating that an emergency order under this section may not alter, amend, or limit the Secretary's obligations or provide authority to amend the CFR.

*PHMSA Response*

PHMSA rejects this suggestion as being unnecessary. The limitations and savings clause contained in section 16 is self-executing and does not require duplicate publication in the code of Federal regulations to be effective. Therefore, PHMSA is not adding a section to include a limitations and savings clause.

However, PHMSA is adding a new paragraph (e) to § 190.236, which is intended to address a different concern. The new paragraph (e) states that if an emergency order remains in effect for more than 365 days, PHMSA will make an assessment regarding whether the imminent hazard underlying the emergency order continues to exist. PHMSA did not receive any public comments suggesting this amendment, but it has decided to add the paragraph as an additional procedural protection to the petition process in § 190.237. Under this new provision, if PHMSA determines the imminent hazard does not continue to exist, PHMSA will rescind the order by notifing the operator in accordance with the procedures in § 190.236(d). If PHMSA determines the imminent hazard underlying the emergency order does continue to exist, PHMSA will initiate a rulemaking. Initating a rulemaking means that PHMSA will begin developing a rulemaking that will propose incorporating the actions mandated in the emergency order in the pipeline safety regulations. The proposed rulemaking will be published in the **Federal Register** and will provide the public an opportunity for notice and comment.

*Summary of Public Comments to § 190.237, Petitions for Review*

AFPM, INGAA, and ONEOK suggested that PHMSA include a provision allowing petitioners to modify or amend petitions for review after they have been filed. ONEOK and INGAA proposed that such amendments be permitted ''within the 30-day deadline for a final agency decision should new information become available that materially affects the review proceeding.'' INGAA stated that such an opportunity to amend a petition for review should not affect the 30-day deadline for reaching a final agency decision.

API/AOPL commented that PHMSA should clarify that if a petition for review is filed, PHMSA has the burden of proving the reasonableness of the order.

*PHMSA Response*

PHMSA accepts the commenters' suggestion to add language clarifying that petitions for review can be amended to provide new information materially affecting the review proceeding, provided such modifications or amendments are timely submitted. The determination whether to accept a modification or amendment will be made by the Associate Administrator where no formal hearing has been requested. In cases that have been referred to an ALJ for a formal hearing, the ALJ will determine whether to accept the new materials.

In response to API's comments about PHMSA's burden of proving the reasonableness of an emergency order, PHMSA has added a paragraph to clarify that the agency bears the burden of proving, by a preponderance of the evidence, that all the elements necessary to sustain an emergency order are present in a particular case, just as it does in other enforcement proceedings. However, a party asserting an affirmative defense bears the burden of proving the affirmative defense by a preponderance of the evidence. Accordingly, in this final rule, PHMSA is adding paragraph (g) to § 190.237 to explicitly define the burden of proof in emergency order cases. Current paragraphs (f) through (k) are redesignated as paragraphs (h) through (m).

*Summary of Public Comments to § 190.237(a)(2), Petitions for Review, Requirements*

Chaparral commented that § 190.237(a)(2) in the IFR requires a petition for review to specifically identify which portions of the emergency order the petition seeks to either ''amend or rescind.'' It proposed that this language be modified to match the statutory language, which states that PHMSA must provide an opportunity for an owner or operator to show why an emergency order should be ''modified'' or ''terminated.''

*PHMSA Response*

PHMSA adopts this suggestion and has revised § 190.237(a)(2) to use the phrase ''modified or terminated'' to be consistent with the statutory language.

*Summary of Public Comments to §§ 190.237(a)(3) and 190.237(c)(1), Petitions for Review, Right to Formal Hearing*

AGA, AFPM, API/AOPL, and INGAA commented that PHMSA should remove the provision requiring that each petition containing a request for a formal hearing must state ''the material facts in dispute giving rise to the request for a hearing,'' as well as the provision providing the Associate Administrator with the discretion to deny a formal hearing request if he finds that the petition for review fails to state material facts in dispute. INGAA expressed concern that denying a formal hearing could impinge on an operator's ability to develop an evidentiary record before an independent administrative law judge. This was of particular concern because an emergency order could potentially have far-reaching consequences on energy reliability, continuity of service, and the economy as a whole. The commenters stated that § 190.237(c)(1) should be modified to make clear that ''the Associate Administrator does not have the discretion to unilaterally deny an affected entity the opportunity to pursue a formal hearing.''

AFPM concurred that a petition should not be denied based simply on a failure to state materials facts because if PHMSA were to issue an emergency order in the aftermath of an accident, the facts underlying the incident would

likely be unknown, or only partially known, even by the operator, during an emergency. AFPM stated that petitioners subject to an emergency order who lack access to all of the underlying facts would need to have the opportunity of a formal hearing to engage in discovery and to exercise other statutorily-required processes.

*PHMSA Response*

PHMSA has adopted the commenters' suggestion that the Associate Administrator refer all petitions that request a formal hearing to an ALJ, regardless of whether or not there are material facts in dispute.

PHMSA recognizes the commenters' concern that, because emergency orders may be issued without prior notice or an opportunity for a hearing, it is important that affected entities be given the chance to develop an evidentiary record before an ALJ. Further, PHMSA notes that an ALJ has broad authority to manage any challenges that may arise during formal hearings, including discovery, evidence, and the consolidation of petitions, all of which must be resolved on the expedited schedule required under the statute. Therefore, for the reasons cited above, PHMSA is modifying the language in 49 CFR 190.237(c) to refer any petition that requests a formal hearing to an ALJ.

*Summary of Public Comments to § 190.237(c)(2), Petitions for Review, Associate Administrator for Pipeline Safety Responsibilities, No Formal Hearing Requested*

API/AOPL requested clarification of the procedures to be used to resolve a petition for review where the petitioner has not requested a formal hearing or if the Associate Administrator denies a petitioner's request to pursue the ALJ process. They suggest that even in the absence of a formal hearing before an ALJ, a petitioner must be afforded the right to develop an adequate record, including the right to answer the agency's response to a petition for review.

*PHMSA Response*

As noted above, PHMSA has accepted the commenters' suggestion to eliminate the authority of the Associate Administrator to deny a petitioner's request for a formal hearing. As for those situations where no formal hearing has been requested, these petitions will be reviewed on the written record, just as is currently done for other enforcement proceedings where no informal hearing has been requested. In both cases, the final agency decision will be rendered by the Associate Administrator.

The commenters have suggested that petitioners in non-hearing cases need a greater opportunity to develop a full evidentiary record. The PIPES Act mandates that PHMSA develop a review process generally in conformance with § 109.19 of this title. As such, § 190.237 must, to the greatest extent practicable, remain consistent with these regulations. Section 109.19(b) provides that an attorney designated by the Office of Chief Counsel, PHMSA, may file and serve a response to a petition for review, but does not include a right by the petitioner to ''reply,'' as suggested by the commenters. PHMSA believes, given the timeframes established by the review process, that the most practicable resolution with respect to the comment is for petitioners to take advantage of the provisions laid out in the IFR. Safeguards already exist to ensure a petitioner's ability to develop an adequate record within the short time frames provided in the statute by amending its petition or seeking reconsideration of the ALJ's report and recommendation, or filing for judicial review in a district court of the United States. Given that emergency orders can only be issued upon a showing that an imminent hazard exists, the administrative process for reviewing an emergency order must necessarily proceed on an expedited basis.

*Summary of Public Comments to § 190.237(c)(3), Petitions for Review, Associate Administrator for Pipeline Safety Responsibilities, Consolidation*

Several commenters objected to the consolidation provision in § 190.237(c)(3). AFPM requested that this provision, which allows the Associate Administrator to consolidate petitions for review that share common issues of law or fact, be removed entirely from the final rule. It commented that the Associate Administrator should not be permitted to consolidate petitions unless each petitioner agrees to consolidation, since the right to petition for review is an individual right held by each affected entity. AFPM requested that if the provision were not removed, then PHMSA should clarify the meaning of the phrase ''substantially similar'' orders, as used in the IFR preamble. Finally, it offered the alternative that if this provision were removed from the final rule, petitioners could then ''elect to consolidate their petitions through consent provided to the ALJ,'' who could then consolidate ''genuinely similar petitioners.''

API/AOPL commented that the final rule should permit only ''like'' petitions to be consolidated, *i.e.,* those that seek resolution pursuant to the same *procedural process.* It stated that if a petitioner seeks review of an emergency order under the more formal ALJ process, then PHMSA should not then ''be able to deny that right'' by consolidating the petition with others who seek resolution without a formal hearing. It suggested that if a petitioner elects to forego a hearing and does not wish to expend the resources required under the ALJ process, then it should not be required to do so if its case were consolidated with others requesting a formal hearing. API/AOPL stated that all petitioners should have the right to decide individually if they wish to pursue review under (c)(1) or (c)(2), and that such choice was necessary to protect a petitioner's ability to elect the appropriate procedural option for itself.

INGAA commented that PHMSA should explicitly state in its regulations that where multiple petitions for review are consolidated, the 30-day expiration period for the emergency order should be controlled by the date that the first petition is filed. It also suggested that the Associate Administrator should have the discretion to de-consolidate a proceeding if circumstances warrant since it ''is easily foreseeable that facts potentially altering the review proceeding may arise after petitions for review have been consolidated.''

*PHMSA Response*

PHMSA believes it is reasonable and practical to permit the Associate Administrator to consolidate petitions for review. Given the potential number of petitioners and the urgency of reviewing multiple petitions, the best use of public resources may be to consolidate substantially similar petitions so that such petitions can be processed efficiently. If a petition is substantially similar to other petitions filed under the same emergency order and is consolidated, the petition is still afforded a full review. Each petitioner in a consolidated proceeding retains the ability to protect its interests, whether in a formal hearing or not, as neither proceeding is limited to considering only one issue. It is in the best interests of the public and judicial economy for PHMSA to have the discretion to require that substantially similar petitions be resolved in a single proceeding.

PHMSA also sees no need to clarify the term ''substantially similar,'' as it is applied to multiple petitions for review. The IFR clearly states that ''substantially similar'' means where more than one

petition includes common issues of fact or law.

As for the suggestion by API/AOPL that PHMSA should permit only ''like'' petitions to be consolidated, *i.e.,* those that seek resolution pursuant to the same *procedural process,* the agency declines to accept this suggestion. If one petitioner files a petition that does not request a formal hearing and another one does, the commenters contend that, if the former ''does not wish to expend the resources required under the ALJ process, then it should not be required to do so.'' PHMSA believes there would be no such requirement. If a non-hearing petition is consolidated with a hearing petition that are considered together by an ALJ, the non-hearing petitioner would not be forced to participate in the formal hearing process. Its petition would still be considered as part of the consolidated case, including any report and recommendation issued by the ALJ, and would still be considered and decided by the Associate Administrator through a final decision on the consolidated case. The substantive claims of the non-hearing petitioner would be fully considered and decided, just the same as they would be if no hearing were held at all. Such a process would also be more efficient and avoid a plethora of hearings and decisions on multiple petitions.

PHMSA also declines to adopt the suggestion that where multiple petitions for review have been consolidated, the 30-day expiration period for the emergency order should be controlled by the date that the first petition is filed. PHMSA believes such language is unnecessary because § 190.237(l) already makes clear that if a decision has not been reached by the Associate Administrator on a petition for review within 30 days, absent a written finding by the Administrator that the emergency condition continues to exist, the emergency order will cease to be effective. This means that if multiple petitions have been filed and consolidated, the date the first petition was filed will serve to start the 30-day review period and the emergency order will expire 30 days thereafter unless the Administrator finds that the emergency continues to exist.

Finally, PHMSA accepts INGAA's suggestion that § 190.237(c)(3) be amended to give the Associate Administrator the discretion to de-consolidate a proceeding. The trade organization contends that factual circumstances could potentially change after multiple petitions have been consolidated that would warrant de-consolidation by the Associate Administrator. In a proceeding where a non-hearing petition has been consolidated with a hearing petition and assigned to an ALJ, the ALJ would have the discretion to handle these petitions in the most efficient manner, including possible de-consolidation. Where the Associate Administrator has consolidated two non-hearing petitions, the final rule gives him the discretion to de-consolidate the two cases if changed circumstances warrant separation. PHMSA believes this would not unduly delay the process, which has been intentionally streamlined to provide expedited resolution of multiple potential petitions.

*Summary of Public Comments to § 190.237(c)(4), Petitions for Review, Associate Administrator for Pipeline Safety Responsibilities, Agency Authority To Request a Formal Hearing*

The AFPM, API/AOPL, and INGAA commented that § 190.237(c)(4), which gives the Associate Administrator the right to request a formal hearing, should be removed from the final rule. They state that section 16 does not provide PHMSA with this authority if a petitioner has not requested a formal hearing. In the alternative, they request (1) clarification of this authority (including the process by which the decision is made); (2) clarification on the standard by which the decision is made; (3) the circumstances that may give rise to such agency action; and (4) how it can be appealed. API/AOPL and INGAA stated that if entities aggrieved by an emergency order choose to proceed without pursuing a formal ALJ hearing, then it would be counter to the interests of administrative economy for the agency to impose a more formal process that would require a petitioner to incur the expenditure of time and resources needed for a formal hearing.

*PHMSA Response*

PHMSA accepts the commenters' suggestion to remove § 109.237(c)(4). However, PHMSA has also clarified the consolidation provision to make clear that the Associate Administrator may consolidate a petition that does not include a formal hearing request with one that does. The provision permitting the Associate Administrator to require a formal hearing in such circumstances, even where a petitioner has not requested one, is a reasonable and practical case-management tool that allows multiple petitions to be heard together and is not precluded by the PIPES Act. Where there is a similar set of facts in dispute and multiple petitions, allowing an ALJ to conduct a single formal hearing can appropriately conserve agency resources. The use of the ALJ can also serve to protect the interests of all petitioners in such circumstances by ensuring that there is a full examination of the facts before PHMSA takes final agency action.

*Summary of Public Comments to § 190.237(d), Petitions for Review, Formal Hearings*

Chaparral suggested that the same formal hearing process should be used for both emergency orders and CAOs, since PHMSA can issue both without prior notice or hearing.[4] Several industry groups also expressed a concern about a lack of procedures in the IFR limiting *ex parte* communications between PHMSA and the presiding ALJ. AFPM, API/AOPL, and INGAA commented that a prohibition on *ex parte* communications (*i.e.,* private contacts between one party and the adjudicator or other persons involved in preparing a final decision) between one party and the presiding ALJ should be included in the final rule. AFPM suggested that *ex parte* prohibitions should begin with the filing of a petition. INGAA stated that *ex parte* rules should apply to any discussion between the ALJ and the Administrator, Associate Administrator, or any other PHMSA personnel acting on behalf of the agency with regard to the merits of a petition for review. INGAA requested, on the other hand, that *ex parte* rules should be clear so as not to foreclose ''continued discussions between the affected operators and the Administrator, Associate Administrator, or PHMSA personnel acting on behalf of the Agency.''

*PHMSA Response*

PHMSA declines to accept Chaparral's suggestion that the formal hearing process be applied to CAOs. First, such a proposed change is beyond the scope of this rulemaking. Second, passage of section 16 is the only time Congress has authorized an affected entity to request a formal hearing in an enforcement action brought by PHMSA, presumably because emergency orders potentially can have much broader impacts than CAOs and other enforcement actions directed against a single operator.

PHMSA also declines to accept the suggestion from AFPM, API/AOPL, and INGAA that language be added to

[4] The company's comment states: ''We believe that a § 554 hearing should be afforded in all instances under Subpart 190 where PHMSA is afforded the authority to take action prior to providing the operator notice and an opportunity to be heard. Under this approach, formal hearing regulations would apply not only to [emergency orders] but also to CAOs.''

paragraph (d) to prohibit *ex parte* communications in these formal hearings. The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* already provides well-established procedures governing *ex parte* communications in formal proceedings on the record (5 U.S.C. 557(d)(1)), including those established under this final rule. Furthermore, these proceedings are also subject to standards established in 14 CFR part 300, including §§ 300.1, 300.2 and 300.4, for rules of conduct in formal proceedings on the record. These provisions apply to all ALJs in the Office of Hearings and will be followed for all formal hearings brought under these regulations.

However, in this paragraph of the final rule, PHMSA is making a minor clerical revision to subparagraph (d)(2) to add the word ''statutes'' which was inadvertently left out of the IFR regulatory text.

*Summary of Public Comments to § 190.237(g), Petitions for Review, Report and Recommendation*

Chaparral commented that the ALJ's report and recommendation should be considered a final agency action subject to judicial review. Chaparral expressed concern that the IFR was unclear whether an aggrieved party that elects not to file a petition for reconsideration could still seek judicial review of the emergency order. Chaparral argued that by making the ALJ report and recommendation a final agency action subject to judicial review, PHMSA would remove any uncertainty about a petitioner's right to seek judicial review without first filing a petition for reconsideration. The commenter believed that such a change would prevent a denial of due process.

*PHMSA Response*

The PIPES Act mandates that PHMSA develop a review process consistent with § 109.19(g) of this title, to the greatest extent practicable and not inconsistent with section 16. This particular provision in the IFR conforms to the hazmat procedures, whereby the Associate Administrator issues the final agency decision upon consideration of the ALJ's report and recommendation, if there is one. The IFR provides that a petitioner aggrieved by an ALJ report and recommendation may file a petition for reconsideration with PHMSA's Associate Administrator, who must then issue a final agency decision within 30 days of receiving the original petition for review. If a petitioner elects to forego the petition for reconsideration, the Associate Administrator must still issue a decision within 30 days of receiving the petition for review, and the petitioner may seek judicial review from the Associate Administrator's decision. Therefore, a petitioner's right to seek judicial review of final agency action on an emergency order is assured, regardless of whether or not the petitioner has sought reconsideration of the ALJ's report and recommendation.

However, in the regulatory text PHMSA has made a minor modification to the language of this paragraph to clarify that the ALJ issues the report and recommendation to the Associate Administrator, whose decisions are considered final agency actions subject to judicial review.

*Summary of Public Comments to § 190.237(h), Petitions for Review, Petition for Reconsideration*

API/AOPL and INGAA commented that to allow owners and operators subject to an emergency order sufficient time to seek reconsideration, the deadline for issuing a report and recommendation be changed from 25 days to 21 days. They suggested that petitioners be given additional time to consider and submit a petition for reconsideration. The commenters suggested that reducing the deadline to 21 days would allow for a petition for reconsideration to be submitted within 3 days instead of 1 day, and also allow PHMSA's response to the petition for reconsideration be submitted within 3 days instead of 1 day.

*PHMSA Response*

Section 16 of the PIPES Act mandates that PHMSA, in issuing the final rule, must develop a process that ''contains the same procedures'' as subsections (d) and (g) of the Hazardous Materials Regulations. Subsection (g) of those regulations specifies that the ALJ's report and recommendation must ''be issued no later than 25 days after receipt of the petition for review. . .'' Since this is one of the provisions that must be identical to the Hazardous Materials Regulations, PHMSA does not have the discretion to reduce the deadline for an ALJ to issue a report and recommendation from 25 to 21 days, as the commenters suggest. The timeline established in this final rule is therefore the same as subsection (g) of the Hazardous Materials Regulations.

In the final rule, PHMSA has modified the language of this paragraph to clarify that a petitioner ''affected and aggrieved'' by the ALJ's report and recommendation may file a petition for reconsideration, and it has also corrected non-substantive typographical errors. PHMSA has also extended the deadline for submitting a petition for reconsideration by allowing a petitioner to request reconsideration up until the 27th day after a petition for review has been filed. This means that in the event an ALJ report and recommendation is issued early (*i.e.,* before the 25-day deadline), then the petitioner gets additional time to file a petition for reconsideration. Likewise, if the ALJ report is issued on or after the twenty-fifth day, a petitioner will now have two days, rather than one, to request reconsideration. This additional time was gained by eliminating the agency's opportunity to respond to the petition for reconsideration. PHMSA believes that the agency does not need an opportunity to respond to a petition for reconsideration since the Associate Administrator's decision will take into account the contents of the petition and respond through the final agency action.

*Summary of Public Comments to § 190.237(i), Petitions for Review, Judicial Review*

Chaparral raised concerns about the process for judicial review of an emergency order or a continuing-hazard determination. It stated that all orders issued under 49 U.S.C. chapter 601, including the issuance of a CAO prior to notice and an opportunity to a hearing, may currently be appealed directly to a circuit court of appeals, but under the IFR, judicial review of an emergency order lies with a Federal district court. Given the similarities between the two types of enforcement orders, Chaparral suggested that judicial review of an emergency order be changed to a Federal circuit court.

*PHMSA Response*

Chaparral is correct that section 16 of the PIPES Act provides that an aggrieved owner or operator may seek review of an emergency order in a district court of the United States. While 49 U.S.C. 60119(a) generally provides that the courts of appeals have jurisdiction over petitions for the review of PHMSA orders issued under Chapter 601 of Title 49, the later-enacted section 16 of the PIPES Act specifically provides that judicial review of emergency orders must be sought in a district court. PHMSA has therefore retained the language from section 16 in the final rule.

*Summary of Public Comments to § 190.237(j), Petitions for Review, Expiration of Emergency Order*

AGA and INGAA requested clarification that PHMSA may lift or remove an emergency order from one or more owners/operators, while leaving it in effect as to others. They stated that if

certain affected operators rectify the imminent hazard more quickly than others, they should be able to petition for release from the emergency order.

Similarly, API/AOPL requested clarification that PHMSA will provide expedited relief from an emergency order if warranted by unique circumstances, such as the need to address unintended consequences of an order that has had a material impact on one or more operators. They requested that PHMSA provide clarification that if unique circumstances arise under an emergency order, a pipeline owner or operator would be permitted to file a petition for expedited relief from an emergency order, and that nothing in the regulations precludes the granting of such relief.

Chaparral commented that four specific changes should be made to § 190.237(j): (1) PHMSA should explain the limited effect and impact of a ''continuing hazard determination'' under various scenarios, depending on whether or not a petition for review has been filed and disposed of within 30 days; (2) PHMSA should limit the time-frame during which a ''continuing hazard determination'' can be made to the 30-day period following the filing of a petition for review; (3) PHMSA should clarify what decision PHMSA must make within the 30-day period; and (4) PHMSA should explain what effect, if any, a ''continuing hazard determination'' would have on a pending proceeding to resolve a petition for review.

Chaparral also requested clarification of the judicial review process for an emergency order. It presented a hypothetical situation whereby the Administrator might deny a petition for reconsideration from the ALJ's report and recommendation yet also issue a separate order finding that an imminent hazard continues to exist past the initial 30-day period. According to the commenter, ''§ 190.237(i) appears to afford the aggrieved party two separate appeals involving the same [emergency order]: one for judicial review of a final agency decision under § 190.237(h)(2), and one for judicial review of a continuing hazard determination under § 190.237(j).'' In addition, Chaparral stated that there is nothing to prevent an aggrieved party from appealing a determination made under § 190.237(j) to one Federal district court and appealing the other final agency decision to an entirely different Federal district court.

*PHMSA Response*

PHMSA clarifies that nothing in the final rule precludes PHMSA from granting expedited relief from an emergency order where PHMSA determines that the imminent hazard has abated with respect to a particular operator or group of operators, or from modifying the emergency order to grant partial relief where warranted by changed circumstances. An emergency order will contain procedures by which individual owners and operators may file petitions for review requesting that PHMSA terminate the emergency order as to them.

The Associate Administrator's decision on a petition for review is final agency action, subject to judicial review. If the Associate Administrator has not disposed of a petition for review within 30 days after it is filed, and the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist, the petitioner may seek judicial review of the emergency order at that time, or wait to seek judicial review of the Associate Administrator's decision, but not both. The regulatory text provides that a petitioner may seek judicial review of an emergency order after a decision by the Associate Administrator on the petition *or* the issuance of a written determination by the Administrator.

As for Chaparral's other requested changes and questions, PHMSA has amended paragraph (l) to make clear that if no petition for review is filed, then the emergency order will continue in effect until PHMSA makes a written determination that the imminent hazard no longer exists and terminates the order. PHMSA declines to modify that same paragraph to specify the time frame during which a ''continuing hazard determination'' can be made since the current language makes clear that such a finding must be made during the 30-day period following the filing of a petition for review.

The agency does clarify, however, that in all instances, the Associate Administrator must issue a decision on a petition for review of an emergency order within 30 days, and thus a petition for reconsideration of an ALJ's report and recommendation does not extend this deadline. If the Associate Administrator does not reach a decision on the petition for review within 30 days, then the emergency order will expire, unless the Administrator makes a determination, in writing, that an imminent hazard continues to exist. If the Administrator determines that an imminent hazard continues to exist, and issues this opinion in writing to prevent the expiration of an emergency order, it would have no effect on the Associate Administrator's decision on a pending petition. The Associate Administrator's decision may still modify or terminate an emergency order.

PHMSA is also making a minor clerical correction to this paragraph to remove language regarding the ALJ not disposing of the petition for review. This was a typographical error.

*Additional Public Comment*

After the comment period had closed, AFPM filed a supplemental comment as part of its larger response to DOT's Transportation Infrastructure docket, see DOT–OST–2017–0057, which was published in the **Federal Register** on June 8, 2017. 82 FR 26734. AFPM reiterated several of its earlier comments in light of the DOT Request for Comments and the policy considerations contained in Executive Orders 13771, 13777, and 13873. AFPM suggested that PHMSA should consider any potential impacts to ongoing or planned pipeline infrastructure projects prior to issuing an emergency order.

*PHMSA Response*

PHMSA notes that section 16 does not expand PHMSA's general authority to regulate pipeline transportation and pipeline facilities but merely provides a means by which the agency may take immediate action when, in extraordinary circumstances, an imminent safety hazard exists that involves multiple owners or operators of gas or hazardous liquid pipeline facilities. The statute requires that the emergency order be narrowly tailored to abate the imminent hazard. Additionally, the regulations require PHMSA to consider the impacts and consult, as the Administrator determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations. These protections are designed to minimize potential adverse impacts, including impacts on planned and ongoing pipeline projects.

## IV. Section-by-Section Analysis

PHMSA is including a discussion about each section of the final rule, not just the amendments to the IFR, for ease of comprehension and clarity. Below is a summary and analysis of the regulatory provisions in the final rule.

*Section 190.3 Definitions*

This section contains a comprehensive set of definitions for part 190. PHMSA adds a new definition for ''formal hearing'' and revises the definitions for ''Emergency order'' and ''imminent hazard.''

*Section 190.5 Service*

Paragraph (a) is revised to remove the exception of personal service for emergency orders.

*Section 190.236 Emergency Orders*

PHMSA revises the language of § 190.236(a) to remove the reference to ''violation'' in the introductory language serving as the basis for issuing an emergency order.

PHMSA is making a non-substantive change to paragraph (b) so that the regulatory text concerning consultation tracks the statutory text in section 16.

Paragraph (c) is amended to conform with the statutory requirement, by adding the phrase ''as appropriate'' to the regulatory text regarding consultation.

Paragraph (d) is amended to provide that PHMSA will personally serve an emergency order on pipeline operators subject to the order, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

Paragraph (e) is added to establish the steps PHMSA will take if an emergency order remains in effect for more than 365 days.

*Section 190.237 Petitions for Review*

Paragraph (a)(2) is amended to use the term ''modified or terminated'' rather than ''amended or rescinded'' to describe the relief sought by a petitioner. These terms are consistent with the introductory language in paragraph (a).

Paragraph (b) is added to allow a petitioner to modify its petition for review to provide new information that materially affects the review proceeding. The Associate Administrator or the presiding ALJ in a formal hearing will determine whether to accept the new materials.

Paragraph (d)(1) is amended to provide that the Associate Administrator will accept all requests for formal hearings and forward them to the DOT Office of Hearings.

Paragraph (d)(3) is amended to require that consolidation occur before a formal hearing commences, to clarify that the Associate Administrator may consolidate a petition that did not request a formal hearing with one or more petitions that have been forwarded to the DOT Office Hearings for a formal hearing, and to de-consolidate multiple petitions that have not requested a formal hearing if he determines that there has been a change in circumstances that warrants separation.

Paragraph (f) is redesignated as paragraph (g) and is revised to explain that PHMSA has the burden of proof, except in the case of an affirmative defense asserted by a petitioner.

Paragraphs (f) through (k) are redesignated as (g) through (l).

Paragraph (h)(2)(iii) is edited to correct the mailing address of the DOT Office of Hearings.

Paragraph (j) is added to provide additional time for a petitioner to file a petition for reconsideration of an administrative law judge's report and recommendation, permitting five days to file for reconsideration if the report and recommendation is issued 20 days or less after the petition for review was filed with PHMSA or two days to file for reconsideration if the report and recommendation is issued more than 20 days after the petition for review was filed.

Paragraph (l) is revised to provide clarity on when an emergency order expires, and to state that if the Associate Administrator has not issued a decision within 30 days of a petition for review, the emergency order shall expire unless the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist.

## IV. Rulemaking Analyses and Notices

### *A. Statutory/Legal Authority for This Final Rule*

PHMSA's general authority to publish this final rule and prescribe pipeline safety regulations is codified at 49 U.S.C. 60101, *et seq.* Section 16 of the PIPES Act authorizes the Secretary of Transportation to establish procedures for the issuance of emergency orders that will be used to address an unsafe condition or practice, or combination of unsafe conditions or practices, that pose an imminent hazard to public health and safety or the environment. The Secretary has delegated the responsibility to exercise this authority to the Administrator. *See* 49 CFR 1.97(a).

### *B. Executive Order 12866, Executive Order 13563, and DOT Policies and Procedures*

This final rule is a significant regulatory action under Executive Order 12866, 58 FR 51735, and the Regulatory Policies and Procedures of the Department of Transportation. The rule was therefore reviewed by the Office of Management and Budget. 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).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This final rule solely affects agency enforcement procedures to implement the emergency-order provisions of the law, and therefore this rulemaking results in no additional burden or compliance costs to industry. However, under circumstances warranting that PHMSA issue an emergency order, there may be incremental compliance actions and costs to operators and benefits related to the immediate lessening of the imminent risks of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment across the entirety of affected populations and environments. In the case of existing regulatory provisions, costs and benefits are attributable to the original rulemaking.

Executive Order 13771

This proposed rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than *de minimis* costs.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism;'' 64 FR 43255; Aug. 10, 1999). This final rule does not introduce any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Further, this final rule does not have an impact on federalism that warrants preparation of a federalism assessment.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 60101 *et seq.,* requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule will not have a significant impact on a substantial number of small entities. Because this rule does not directly impact any entity, PHMSA determined that this final rule will not have a significant impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA; Pub. L. 96–511; Dec. 11, 1980). The PRA requires Federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of Federal information, ensuring the use of information technology to improve Government performance, and improving the Federal government's accountability for managing information collection activities. This final rule contains no new information collection requirements subject to the PRA. In the IFR, PHMSA requested comment on the potential paperwork burdens associated with this rulemaking. PHMSA received no comments related to paperwork burdens associated with the emergency order provisions or other potential information requests related to them.

*E. Executive Order 13175*

PHMSA has analyzed this final rule according to the principles and criteria in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments;'' 65 FR 67249; Nov. 9, 2000). Because this final rule will not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*F. Executive Order 13211*

This final rule is not a significant energy action under Executive Order 13211 (66 FR 28355; May 18, 2001). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant, adverse effect on the supply, distribution, or use of energy. Furthermore, this final rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

*G. Unfunded Mandates Reform Act of 1995*

This final rule would not impose unfunded mandates under the Unfunded Mandates Act of 1995 (Pub. L. 104–4; Dec. 4, 1995). The final rule would not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the final rule.

*H. Environmental Assessment*

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether an action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

Congress enacted the PIPES Act, in part, to address safety issues affecting multiple or all owners/operators of gas or hazardous liquid pipeline facilities

2. Alternatives

Because this final rule addresses a congressional mandate, PHMSA has limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority would continue PHMSA's inability to address conditions or practices constituting an imminent risk of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment.

3. Analysis of Environmental Impacts

There are no direct environmental impacts to analyze. However, the issuance of an emergency order represents a reduction in imminent risk of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment that cannot be lessened timely enough through a formal proceeding begun to lessen the risk.

*I. Regulation Identifier Number*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the United Agenda.

*J. Privacy Act*

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register**, (*see* 65 FR 19477–78; April 11, 2000), or you may visit *http://www.regulations.gov.*

**List of Subjects in 49 CFR Part 190**

Emergency orders; Administrative practice and procedures.

For the reasons discussed in the preamble, the interim rule amending 49 CFR part 190, which was published on October 14, 2016, (81 FR 70980) is adopted as a final rule with the following amendments:

## PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

■ 1. The authority citation for Part 190 continues to read as follows:

**Authority:** 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.;* 49 CFR 1.97; Pub. L. 114–74, section 701; Pub. L. No: 112–90, section 2; Pub. L. 101–410, sections 4–6.

■ 2. Amend § 190.3 as follows:
■ a. Revise the definitions of ''Emergency order'' and ''Imminent hazard'' in alphabetical order; and
■ b. Add the definition of ''Formal hearing'' in alphabetical order.

The revisions and addition read as follows:

**§ 190.3 Definitions.**

* * * * *

*Emergency order* means a written order issued in response to an imminent hazard imposing restrictions, prohibitions, or safety measures on owners and operators of gas or hazardous liquid pipeline facilities, without prior notice or an opportunity for a hearing.

*Formal hearing* means a formal review in accordance with 5 U.S.C. 554, conducted by an administrative law judge.

* * * * *

*Imminent hazard* means the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury or endangerment.

* * * * *

■ 3. In § 190.5, revise paragraph (a) to read as follows:

**§ 190.5 Service.**

(a) Each order, notice, or other document required to be served under

this part, will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

* * * * *

■ 4. Revise § 190.236 to read as follows:

**§ 190.236 Emergency orders: Procedures for issuance and rescision.**

(a) *Determination of imminent hazard.* When the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard, as defined in § 190.3, the Administrator may issue or impose an emergency order, without advance notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard. The order will contain a written description of:

(1) The violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Those entities subject to the order;

(3) The restrictions, prohibitions, or safety measures imposed;

(4) The standards and procedures for obtaining relief from the order;

(5) How the order is tailored to abate the imminent hazard and the reasons the authorities under 49 U.S.C. 60112 and 60117(l) are insufficient to do so; and

(6) How the considerations listed in paragraph (c) of this section were taken into

account.

(b) *Consultation.* In considering the factors under paragraph (c) of this section, the Administrator shall consult, as the Administrator determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(c) *Considerations.* Prior to issuing an emergency order, the Administrator shall consider the following, as appropriate:

(1) The impact of the emergency order on public health and safety;

(2) The impact, if any, of the emergency order on the national or regional economy or national security;

(3) The impact of the emergency order on the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers; and

(4) The results of any consultations with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(d) *Service.* The Administrator will provide service of emergency orders in accordance with § 190.5 to all operators of gas and hazardous liquid pipeline facilities that the Administrator reasonably expects to be affected by the emergency order. In addition, the Administrator will publish emergency orders in the **Federal Register** and post them on the PHMSA website as soon as practicable upon issuance. Publication in the **Federal Register** will serve as general notice of an emergency order. Each emergency order must contain information specifying how pipeline operators and owners may respond to the emergency order, filing procedures, and service requirements, including the address of DOT Docket Operations and the names and addresses of all persons to be served if a petition for review is filed.

(e) *Rescission.* If an emergency order has been in effect for more than 365 days, the Administrator will make an assessment regarding whether the unsafe condition or practice, or combination of unsafe conditions and practices, constituting or causing an imminent hazard, as defined in § 190.3, continues to exist. If the imminent hazard does not continue to exist, the Administrator will rescind the emergency order and follow the service procedures set forth in § 190.236(d). If the imminent hazard underlying the emergency order continues to exist, PHMSA will initiate a rulemaking action as soon as practicable.

■ 5. Revise § 190.237 to read as follows:

**§ 190.237 Emergency orders: Petitions for review.**

(a) *Requirements.* A pipeline owner or operator that is subject to and aggrieved by an emergency order may petition the Administrator for review to determine whether the order will remain in place, be modified, or be terminated. A petition for review must:

(1) Be in writing;

(2) State with particularity each part of the emergency order that is sought to be modified or terminated and include all information, evidence and arguments in support thereof;

(3) State whether the petitioner requests a formal hearing in accordance with 5 U.S.C. 554, and, if so, any material facts in dispute; and,

(4) Be filed and served in accordance with paragraph (h) of this section.

(b) *Modification of petitions.* A petitioner may modify its petition for review to provide new information that materially affects the review proceeding and that is timely submitted. Where the petitioner has not requested a formal hearing, the Associate Administrator will make the determination whether to accept the new information. Where a case has been assigned for a formal hearing, the presiding administrative law judge will determine whether to accept the new information.

(c) *Response to the petition for review.* An attorney designated by the Office of Chief Counsel may file and serve, in accordance with paragraph (h) of this section, a response to the petition, including appropriate pleadings, within five calendar days of receipt of the petition by the Chief Counsel.

(d) *Associate Administrator's responsibilities.*—(1) *Formal hearing requested.* Upon receipt of a petition for review that includes a formal hearing request under this section, the Associate Administrator will, within three days after receipt of the petition, assign the petition to the Office of Hearings, DOT, for a formal hearing.

(2) *No formal hearing requested.* Upon receipt of a petition for review that does not include a formal hearing request, the Associate Administrator will issue an administrative decision on the merits within 30 days of receipt of the petition for review. The Associate Administrator's decision constitutes the agency's final decision.

(3) *Consolidation.* If the Associate Administrator receives more than one petition for review and they share common issues of law or fact, the Associate Administrator may consolidate the petitions for the purpose of complying with this section, provided such consolidation occurs prior to the commencement of a formal hearing. The Associate Administrator may reassign a petition that does not request a formal hearing to the Office of Hearings, DOT, provided the petition otherwise meets the requirements for consolidation. If the Associate Administrator has consolidated multiple petitions that do not request a formal hearing, he may de-consolidate such petitions if there has been a change in circumstances that, in his discretion, warrant separation for the purpose of rendering a final decision.

(e) *Formal Hearings.* Formal hearings must be conducted by an administrative law judge assigned by the chief administrative law judge of the Office of Hearings, DOT. The administrative law judge may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by the appropriate statutes and agency regulations (*e.g.,* 49 U.S.C. 60117 and 49 CFR 190.7);

(3) Adopt the relevant Federal Rules of Civil Procedure for the United States District Courts for the procedures

governing the hearings, when appropriate;

(4) Adopt the relevant Federal Rules of Evidence for United States Courts and Magistrates for the submission of evidence, when appropriate;

(5) Take or cause depositions to be taken;

(6) Examine witnesses at the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Convene, recess, adjourn or otherwise regulate the course of the hearing;

(9) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(10) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of an issue raised.

(f) *Parties.* The petitioner may appear and be heard in person or by an authorized representative. PHMSA will be represented by an attorney designated by the Office of Chief Counsel.

(g) *Burden of proof.* Except in the case of an affirmative defense, PHMSA shall bear the burden of proving, by a preponderance of the evidence, the validity of an emergency order in a proceeding under this section by a preponderance of the evidence. A party asserting an affirmative defense shall bear the burden of proving, by a preponderance of the evidence, the affirmative defense in a proceeding under this section.

(h) *Filing and service.* (1) Each petition, pleading, motion, notice, order, or other document submitted in connection with an emergency order issued under this section must be filed (commercially delivered or submitted electronically) with: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. All documents filed will be published on the Department's docket management website, *http://www.regulations.gov.* The emergency order must state the above filing requirements and the address of DOT Docket Operations.

(2) Each document filed in accordance with paragraph (h)(1) of this section must be concurrently served upon the following persons:

(i) Associate Administrator for Pipeline Safety, OPS, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Washington, DC 20590;

(ii) Chief Counsel, PHC, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Washington, DC 20590 (facsimile: 202–366–7041); and

(iii) If the petition for review requests a formal hearing, the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, 1200 New Jersey Ave SE, c/o Mail Center (E11–310), Washington, DC 20590 (facsimile: 202–366–7536).

(3) Service must be made in accordance with § 190.5 of this part. The emergency order must state all relevant service requirements and list the persons to be served and may be updated as necessary.

(4) *Certificate of service.* Each order, pleading, motion, notice, or other document must be accompanied by a certificate of service specifying the manner in which and the date on which service was made.

(5) If applicable, service upon a person's duly authorized representative, agent for service, or an organization's president or chief executive officer constitutes service upon that person.

(i) *Report and recommendation.* The administrative law judge must issue a report and recommendation to the Associate Administrator at the close of the record. The report and recommendation must:

(1) Contain findings of fact and conclusions of law and the grounds for the decision, based on the material issues of fact or law presented on the record;

(2) Be served on the parties to the proceeding; and

(3) Be issued no later than 25 days after receipt of the petition for review by the Associate Administrator.

(j) *Petition for reconsideration.* (1) A petitioner aggrieved by the administrative law judge's report and recommendation may file a petition for reconsideration with the Associate Administrator. The petition for reconsideration must be filed:

(i) Not more than five days after the administrative law judge has issued a report and recommendation under paragraph (i) of this section, provided such report and recommendation is issued 20 days or less after the petition for review was filed with PHMSA; or

(ii) Not more than two days after the administrative law judge has issued his or her report and recommendation under paragraph (h) of this section, where such report and recommendation are issued more than 20 days after the petition for review was filed with PHMSA.

(2) The Associate Administrator must issue a decision on a petition for reconsideration no later than 30 days after receipt of the petition for review. Such decision constitutes final agency action on a petition for review.

(k) *Judicial review.* (1) After the issuance of a final agency decision pursuant to paragraphs (d)(2) or (j)(2) of this section, or the issuance of a written determination by the Administrator pursuant to paragraph (l) of this section, a pipeline owner or operator subject to and aggrieved by an emergency order issued under § 190.236 may seek judicial review of the order in the appropriate district court of the United States. The filing of an action seeking judicial review does not stay or modify the force and effect of the agency's final decision under paragraphs (d)(2) or (j)(3) of this section, or the written determination under paragraph (l) of this section, unless stayed or modified by the Administrator.

(l) *Expiration of order.* (1) *No petition for review filed:* If no petition for review is filed challenging the emergency order, then the emergency order shall remain in effect until PHMSA determines, in writing, that the imminent hazard no longer exists or the order is terminated by a court of competent jurisdiction.

(2) *Petition for review filed and decision rendered within 30 days.* If the Associate Administrator renders a final decision upon a petition for review within 30 days of its receipt by PHMSA, any elements of the emergency order upheld or modified by the decision shall remain in effect until PHMSA determines, in writing, that the imminent hazard no longer exists or the order is terminated by a court of competent jurisdiction.

(3) *Petition for review filed but no decision rendered within 30 days.* If the Associate Administrator has not reached a decision on the petition for review within 30 days of receipt of the petition for review, the emergency order will cease to be effective unless the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist.

(m) *Time.* In computing any period of time prescribed by this section or an order or report and recommendation issued by an administrative law judge under this section, the day of filing of a petition for review or of any other act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the

period runs until end of the next day which is not one of the aforementioned days.

Issued in Washington, DC on September 16, 2019, under authority delegated in 49 CFR 1.97.

**Howard R. Elliott,**

*Administrator.*

[FR Doc. 2019–20308 Filed 9–90–19; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 383 and 384

**[Docket No. FMCSA–2001–11117]**

**RIN 2126–AA70**

## Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement; Interim Final Rule Made Final

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

**ACTION:** Final rule.

**SUMMARY:** FMCSA adopts those requirements of the interim final rule (IFR) published on May 5, 2003 (2003 IFR), and the IFR published on April 29, 2005 (2005 IFR), which have not previously been finalized, as final without change. The 2003 IFR amended the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit States from issuing, renewing, transferring, or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) in the Department of Homeland Security has first conducted a security threat assessment and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement, as required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). The 2005 IFR amended the FMCSRs to conform to the TSA's compliance date and reduce the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement. In addition, this rule incorporates a provision of the Implementing Recommendations of the 9/11 Commission Act of 2007 and two provisions of the FAA Reauthorization Act of 2018, which together authorize a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid transportation security card. In particular, the Agency incorporates TSA's definition of a Transportation Worker Identification Credential (TWIC) as equivalent to a Transportation Security Card (TSC).

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; by email at *Selden.Fritschner@dot.gov,* or by telephone at (202) 366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Rulemaking Documents

*A. Availability of Rulemaking Documents*

For access to docket FMCSA–2001–11117 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*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.transportation.gov/privacy.*

### II. Executive Summary

*A. Purpose of the Regulatory Action*

This final rule adopts the provisions of the IFR published on May 5, 2003 (68 FR 23844) that have not previously been made final, and the provisions of the subsequent IFR published on April 29, 2005 (70 FR 22268). This is an administrative action to finalize these rules. This final rule includes conforming changes to incorporate a provision of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) (Pub. L. 110–53, Aug. 3, 2007) and two provisions of the FAA Reauthorization Act of 2018 (FAA Act) (Pub. L. 115–254, Oct. 5, 2018).

*B. Costs and Benefits*

This rulemaking does not make substantive changes to the obligations of regulated entities. It adopts as final certain elements of the 2003 IFR and the 2005 IFR and includes non-discretionary provisions from the 9/11 Act and the FAA Act. This rulemaking has no incremental impacts on the regulated entities.

### III. Legal Basis for the Rulemaking

The legal basis for the 2003 IFR was explained in that document (68 FR 23844) and repeated in the 2005 IFR (70 FR 22268). Because those IFRs are available in the docket listed at the beginning of this document, the legal basis will not be repeated in detail here.

Briefly, section 1012 of the USA PATRIOT Act enacted 49 U.S.C. 5103a, which prohibits States from issuing a driver a hazardous materials endorsement to his/her CDL until the Secretary of Transportation has first determined that the driver does not pose a security risk warranting denial of the endorsement (Pub. L. 107–56, 115 Stat. 272, 396, Oct. 26, 2001).

The 9/11 Act made a technical correction to replace the reference to the ''Secretary of Transportation'' in 49 U.S.C. 5103a(a)(1) with a reference to the ''Secretary of Homeland Security'' (Sec. 1556, Pub. L. 110–53, 121 Stat. 266, 475, Aug 3, 2007). The change did not alter the legal basis of the 2003 and 2005 IFRs because those actions rested on a different provision, 49 U.S.C. 31305(a)(5)(C). The 9/11 Act also provided that an individual who has a valid transportation employee identification card issued by the Secretary of Homeland Security shall be deemed to have met the background check required by 49 U.S.C. 5103a.

The FAA Act (Pub. L. 115–254, Oct. 5, 2018) provides that an applicable individual subject to credentialing or a background investigation may satisfy that requirement by obtaining a valid TSC. Section 1978 of the FAA Act amended 49 U.S.C. 5103a(a)(1), by allowing a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid TSC issued under 46 U.S.C. 70105.

The Administrative Procedure Act requires an Agency to promulgate final rules only after prior notice and opportunity for comment, unless the Agency finds good cause that notice and opportunity for public comment are ''impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(3)(B)). FMCSA finds good cause that notice and comment are

''unnecessary'' for this rule. This rule simply makes final certain provisions of two interim final rules (IFRs) that have been in effect since 2003 and 2005. The Agency accepted post-publication comments on both IFRs, most recently in 2018 (see Limitation on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement, Interim rules; re-opening of comment (83 FR 62503, Dec. 4, 2018)). Many other provisions of both IFRs were made final by notice-and-comment rulemaking after 2003 and 2005. In response to a comment filed when this docket was reopened (83 FR 62503, Dec. 4, 2018), the Agency also makes ministerial changes to incorporate provisions of the 9/11 Act and the FAA Act. None of these actions changes the burden on drivers, motor carriers, or State driver licensing agencies. The incorporation of provisions in the 9/11 Act and FAA Act merely codifies in the FMCSRs provisions already in effect by operation of law. Specifically, the Agency incorporates TSA's definition of a TWIC as equivalent to a TSC. Because public comments would not result in changes to any of these actions, additional notice and opportunity for comment are unnecessary.

## IV. Background

### *Regulatory History*

On May 5, 2003, FMCSA published an IFR titled ''Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement'' (68 FR 23844). In that document, the Agency revised its regulations to require State driver licensing agencies to issue or renew a hazardous materials endorsement for a CDL only if TSA has first determined that the applicant does not pose a security risk warranting denial of such endorsement. A CDL renewal, transfer, or upgrade was also considered a new issuance and fell within the scope of these requirements if it involved a hazardous materials endorsement. The IFR implemented FMCSA's part of the requirements of section 1012 of the USA PATRIOT Act, which limited the issuance of hazardous materials licenses. Because FMCSA shares with TSA the responsibility for implementing section 1012—codified in 49 U.S.C. 5103a and 31305(a)(5)(C)—TSA concurrently published an IFR containing regulations governing the security risk determination process in 49 CFR parts 1570 and 1572 (May 5, 2003, 68 FR 23852). FMCSA received comments, which are summarized in a document filed in the docket. No public meeting was requested and none was held. The IFR became effective upon publication on May 5, 2003.

On April 29, 2005, FMCSA published an IFR titled ''Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement'' (70 FR 22268). That rule was issued as an IFR because it related to the 2003 IFR. In the preamble, FMCSA wrote that the 2005 IFR would be subsumed into the 2003 IFR when that rulemaking was finalized. FMCSA's 2003 IFR provided a specific date on which States became subject to the new requirement. The 2005 IFR amended the FMCSRs to cross-reference the TSA's compliance date as the date when FMCSA's companion requirements also became applicable (70 FR 22268). Consistent with the TSA regulations, FMCSA also reduced the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement. FMCSA did not receive any comments on the 2005 IFR. No public meeting was requested and none was held. The IFR became effective upon publication on April 29, 2005.

Some of the provisions in the May 5, 2003 IFR were subsequently changed in notice and comment rulemaking, and became final. They are described in the following table. Those items listed as ''same'' in the second column have not been changed since they were originally implemented in 2003.

REGULATORY ACTIONS RELATED TO THIS FINAL RULE

| IFR provisions May 5, 2003 | Current IFR status | Changed in post 2003 notice and comment rulemaking |
|---|---|---|
| § 383.5 *Alien* | Same. | |
| § 383.5 *CMV* | | Definition of CMV was revised May 9, 2011 (76 FR 26878); October 2, 2014 (79 FR 59455); October 1, 2015 (80 FR 59072). |
| § 383.5 *Hazardous materials* | Same. | |
| § 383.23(c) *Learner's permit* | | § 383.23 was revised May 9, 2011 (76 FR 26878, 26879). Requirements for commercial learner's permit moved to § 383.25. |
| § 383.71(a)(9) | | § 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(a)(9) now in § 383.71(b)(8) and (9). |
| § 383.71(b)(3) [License transfer] | | § 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(b)(3) now in § 383.71(c)(3). |
| § 383.71(c)(3) [License renewal] | | § 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(c)(3) now in § 383.71(d)(3). |
| § 383.71(d) [License upgrades] | | § 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(d) now in § 383.71(e)(1)–(4). |
| § 383.73(a)(5) [Initial licensure] | | § 383.73 was revised May 9, 2011 (76 FR 26883). Requirements of § 383.73(a)(5) moved to § 383.73(b)(8) [Initial CDL]. |
| § 383.73(b)(4) [License transfers] | | § 383.73 was revised May 9, 2011 (76 FR 26883). Requirements of § 383.73(b)(4) now in § 383.73(c)(4) [License transfers]. |
| § 383.73(c)(4) [License renewals] | | § 383.73 was revised May 9, 2011 (76 FR 26883). Requirements of § 383.73(c)(4) now in § 383.73(d)(1) [License renewals]. |
| § 383.93(b)(4) [Endorsement descriptions] | Same. | |
| Part 383, Subpart I, Title | Same. | |
| § 383.141(a) [Applicability date] | Subsequent IFR | Revised by IFR April 29, 2005 (70 FR 22271). Corrected in a revision October 1, 2012 (77 FR 59825). |
| § 383.141(b) [Prohibition] | Same. | |
| § 383.141(c) [Individual notification] | Subsequent IFR | Revised by IFR April 29, 2005 (70 FR 22271). |
| § 383.141(d) [Hazardous materials endorsement renewal cycle]. | Same. | |

REGULATORY ACTIONS RELATED TO THIS FINAL RULE—Continued

| IFR provisions May 5, 2003 | Current IFR status | Changed in post 2003 notice and comment rulemaking |
|---|---|---|
| § 384.233 [Background records checks] ..... | Same. | |

In a document published in the **Federal Register** on December 4, 2018 (83 FR 62503), FMCSA announced its plan to adopt the provisions of the IFRs that had not previously been made final, and its intention to incorporate sections 1977 and 1978 of the FAA Act. That document re-opened the comment period for 15 days to ensure that interested parties had an opportunity to offer comments on the prior IFRs and the provisions from the FAA Act. The comment period closed on December 19, 2018. FMCSA received one comment, which is discussed below.

## V. Discussion of the Interim Final Rules and Those Provisions Being Finalized in This Final Rule

In the 2003 IFR, FMCSA amended the CDL driver application (§ 383.71) and State licensing (§ 383.73) procedures to require all individuals to pass the TSA screening process when renewing, upgrading, transferring, or newly applying for a CDL with a hazardous materials endorsement. Similarly, the Agency added a new subpart I (§ 383.141) to prohibit the issuance of a hazardous materials endorsement for a CDL unless TSA has determined that the applicant does not pose a security risk warranting denial of the endorsement. FMCSA added § 383.141(c) to require a State to notify an individual at least 180 days (6 months) prior to the expiration date of a CDL or hazardous materials endorsement that he or she must pass the new TSA security screening process. Finally, the Agency added § 383.141(d) to require States to adopt, at minimum, a 5-year renewal cycle for a CDL hazardous materials endorsement.

To comply with statutory requirements, FMCSA added a definition of ''Alien.'' FMCSA also revised the definition of ''Hazardous materials'' to include ''any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General to pose a threat to national security.'' Additionally, in the definition of ''Commercial motor vehicle'' (CMV) and in § 383.93(b)(4), FMCSA made conforming changes to ensure that drivers newly covered by the hazardous materials definition are required to obtain a CDL with a hazardous materials endorsement, and are subject to the TSA security screening process. The Agency made changes to § 383.23(c) to ensure that the rules governing the CDL learner's permit were consistent with TSA's implementing regulations. FMCSA also added § 384.233 to describe the requirements with which States must comply.

On April 29, 2005, FMCSA published another IFR that changed § 383.141 to conform to changes in the TSA regulations. In § 383.141(a), the Agency removed the applicability date and inserted a cross-reference to the date in 49 CFR 1572.13(b). FMCSA also shortened the time frame in § 383.141(c) in which a State must give notice to a holder from 180 days to 60 days. FMCSA required the notice to inform the individual that he or she may initiate the security threat assessment no later than 30 days before the date of expiration of the endorsement, not the 90 days in the 2003 IFR.

As noted in the table above, many of these provisions have been amended and finalized in separate regulatory actions occurring since 2005. Today's action will finalize the following provisions, which have not been otherwise revised or finalized since they were first promulgated in 2003 or 2005:

(1) Definition of ''Alien'' in § 383.5;

(2) Definition of ''Hazardous materials'' in § 383.5;

(3) Addition of paragraph (b)(4) to § 383.93, requiring State-issued endorsements on CDLs when the holder is operating a CMV used to transport hazardous materials;

(4) Creation of the Subpart title for subpart I (Requirement for Transportation Security Administration approval of hazardous materials endorsement issuances);

(5) Addition of paragraphs (b) and (d) in § 383.141, prohibiting a State from issuing, renewing, upgrading, or transferring a hazardous materials endorsement on a CDL unless TSA has determined that the holder of the CDL does not pose a security risk, and establishing a 5-year renewal cycle for hazardous materials endorsements, respectively; and

(6) Addition of § 384.233, requiring States to comply with any TSA requirements regarding background checks for drivers seeking to obtain, renew, transfer, or upgrade a hazardous materials endorsement.

## VI. Comment Response

FMCSA solicited comments to both the 2003 and 2005 IFRs. The Agency received over 50 comments on the 2003 IFR; a summary of those comments is available in docket FMCSA–2001–11117. No comments were received on the 2005 IFR.

The comments filed in the FMCSA docket by the Commercial Vehicle Safety Alliance, the American Association of Motor Vehicle Administrators, and various States focused almost entirely on TSA requirements rather than the FMCSA rule, and most appear to have been filed in the TSA docket as well. TSA's 2003 IFR required States to begin fingerprint-based criminal records background checks by November 3, 2003. The comments of the Iowa Department of Transportation are typical of those filed by other affected parties: ''[T]he compliance date of November 3, 2003, does not provide a reasonable amount of time in which to make changes to the Iowa Administrative Code, to make technical amendments to state statutes, to make appropriate computer programming changes, to train employees and to put in place the mechanism with law enforcement agencies for fingerprinting services or contract with a third party for such services. Holding the jurisdictions to an unreasonable compliance date may place every state into a status of noncompliance with a CDL program we have worked hard to be compliant with since 1992.'' In response to these and subsequent objections, TSA moved the compliance date for fingerprint-based background checks, first to April 1, 2004 (68 FR 63033, Nov. 7, 2003) and then to January 31, 2005 (69 FR 17969, Apr. 6, 2004).

Individual drivers, trucking companies, and several States commented on TSA's list of offenses that would permanently disqualify a driver from obtaining a hazardous materials endorsement. TSA therefore amended that list in an IFR of November 24, 2004 (69 FR 68720).

Finally, many States raised technical questions about the necessary electronic interface with TSA and the Federal Bureau of Investigation, which compares the fingerprints used for the criminal check against available

criminal rap sheets. These were not strictly regulatory issues and were resolved over time through technical and administrative solutions.

FMCSA's IFR of April 29, 2005, simply required the States to comply with the various changes TSA had implemented over the previous two years.

In short, the issues raised by commenters in 2003 are moot because they involved procedural questions that have been resolved and implementation deadlines that have long passed. The questions posed by commenters have been resolved outside the context of the IFRs, and requests for clarification of the IFRs or the TSA rules have been satisfied through direct contacts with commenters and other affected parties. Most importantly, commenters' objections have been met by significant amendments to the TSA rules on background checks and by subsequent conforming changes to the FMCSA regulations.

As noted earlier, FMCSA re-opened the comment period on these two IFRs in late 2018, and received one comment, jointly submitted by The National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations (ATA), regarding Sec. 1978 of the FAA Act. NTTC and ATA called for an update of 49 CFR 383.141, arguing that States are empowered by 49 U.S.C. 5103(a) to issue hazardous materials endorsements to drivers holding TWIC cards. NTTC and ATA requested that FMCSA issue guidance to ensure that States adopt a common standard. NTTC and ATA maintained that FMCSA is in a better position to instruct States on how best to verify a TWIC's validity. NTTC and ATA argued that, by virtue of 6 U.S.C. 1206 and Sec. 1978 of the FAA Act, Congress intended the State driver licensing agencies and FMCSA to be the primary actors in regulating the issuance of hazardous material endorsements when TSA background checks are not required.

Accordingly, NTTC and ATA requested that the Agency:

- Include 6 U.S.C. 1206 into the legislative authority for hazardous materials endorsement background checks;
- Modify the requirements on States for issuing hazardous materials endorsements to conform with Sec. 1978 of the FAA Act, including the addition of a definition for TWIC; and
- Advise and liaise with TSA to modify 49 CFR part 1572, subpart A, to conform with Sec. 1978 of the FAA Act.

NTTC and ATA requested expansion of the rule's legislative authority section to include Sec. 1556(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007, codified at 6 U.S.C. 1206. Section 1206 provides that an individual who has a valid transportation employee identification card issued under 46 U.S.C. 70105 shall be deemed to have met the background records check required under 49 U.S.C. 5103a. Although Sec. 1206 is directed to the Department of Homeland Security, and not FMCSA, 49 U.S.C. 31305(a)(5)(C) requires this Agency to issue regulations to ensure that a CDL applicant ''is licensed by a State to operate the [commercial motor] vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license.'' To carry out Sec. 31305(a)(5)(C), FMCSA must be able to implement the mandate of 6 U.S.C. 1206 and the amendments to 49 U.S.C. 5103a. The authority of those provisions is therefore implicitly delegated to FMCSA and will be listed in the authority citation for 49 CFR part 383.

Further, NTTC and ATA requested modification of § 383.141 to properly vest the authority to issue hazardous materials endorsements to individuals who hold TWICs with State driver licensing agencies. FMCSA makes this adjustment to the regulation pursuant to the FAA Act. The Agency is also adding a definition of TWIC as requested by the commenter, to ensure there is no confusion among State driver licensing agencies or drivers.

Regarding the request that FMCSA liaise with the TSA to update 49 CFR parts 1570 and 1572 to ensure that they are grounded in congressionally-delegated authority, FMCSA will forward this comment to TSA, which has the sole authority to make changes to the cited regulations.

## VII. Regulatory Analyses

### *A. Executive Order (E.O). 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, Feb. 26, 1979).

In a document published on December 4, 2018, FMCSA announced its plan to adopt the provisions of the IFRs that had not previously been made final, as well as its intention to incorporate sections 1977 and 1978 of the FAA Act. These sections, which were enforceable upon the Act's publication on October 5, 2018, provided an exemption from the TSA screening process for individuals holding a valid TWIC. This final rule adds § 383.141(b)(2) to 49 CFR to be consistent with this provision in the FAA Act. This rulemaking also adopts as final the elements of the 2003 IFR and the 2005 IFR.

While some parts of the 2003 IFR remain unchanged, other elements have been changed and made final by subsequent rulemaking. This rulemaking finalizes the following sections:

- Section 383.5 (Definitions of ''Alien'', ''Hazardous materials'', and ''TWIC'');
- Section 383.93(b)(4) (Endorsements);
- Section 383.141(b), (c), and (d) (Subpart I—Requirement for Transportation Security Administration Approval of Hazardous Materials Endorsement Issuances); and
- Section 384.233 (Background Records Checks).

Because this rulemaking is procedural and simply finalizes those provisions of the 2003 and 2005 IFRs that are not already final, and incorporates provisions of the 9/11 Act and the FAA Act, this rulemaking does not result in an incremental change from the IFRs. Those statutes have been in effect since their enactment in 2007 and 2018, respectively. Thus, this rulemaking has no incremental impacts on the regulated entities.

### *B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs*

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment.

The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.[1] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule directly affects the States and driver applicants for a hazardous materials endorsement. Under the standards of the RFA, as amended by the SBREFA, neither the States nor driver applicants for a hazardous materials endorsement are small entities. States are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5) of the RFA, both because State government is not included among the various levels of government listed in section 601(5), and because, even if this were the case, no State, including the District of Columbia, has a population of less than 50,000, which is the criterion for a governmental jurisdiction to be considered small under section 601(5) of the RFA. Driver applicants for a hazardous materials endorsement are not considered small entities because they too do not meet the definition of a small entity in section 601 of the RFA. Specifically, driver applicants for a hazardous materials endorsement are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. Therefore, this final rule does not have an impact on a substantial number of small entities.

Accordingly, I hereby certify that the action does not have a significant economic impact on a substantial number of small entities.

*D. Assistance for Small Entities*

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Mr. Selden Fritschner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

*E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

*F. Paperwork Reduction Act*

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*G. E.O. 13132 (Federalism)*

A rule has implications for federalism under section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' When FMCSA issued the original IFRs on May 5, 2003 (68 FR 28344), and April 29, 2005 (70 FR 22268), it determined that those rules did not impose substantial direct costs on or for States, nor did they limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

*H. E.O. 12988 (Civil Justice Reform)*

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*I. E.O. 13045 (Protection of Children)*

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not disproportionately affect children.

*J. E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

*K. Privacy Impact Assessment*

Because the 2003 IFR was in effect prior to the enactment of section 522, of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004, 5 U.S.C. 552a note), FMCSA was not required to provide a Privacy Impact Assessment (PIA) for that rulemaking. This rulemaking is an administrative action to clarify the legal status of the 2003 and 2005 IFRs, and it makes minor conforming changes to the CFR to incorporate subsequent legislation. FMCSA, however, submitted a Privacy Threshold Assessment (PTA) analyzing the rulemaking to the Secretary of Transportation's Privacy Office for formal adjudication. FMCSA provides the following description of the PTA, describing current requirements, for information.

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, requires the Agency to conduct a PIA of a regulation that will affect the privacy of individuals. Any such

[1] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Available at: *https://www.sba.gov/advocacy/regulatory-flexibility-act* (accessed Feb. 13, 2017).

assessment must consider impacts of a final rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer and the DOT Privacy Officer have evaluated the risks and effects this rulemaking might have on collecting, storing, and sharing personally identifiable information (PII) and have evaluated protections and alternative information handling processes in developing the final rule in order to mitigate potential privacy risks and have determined that this rule does not require the collection of PII by FMCSA. This rulemaking has the ultimate effect of requiring individuals to provide sensitive PII to the Transportation Security Administration (TSA). Individuals should refer to the TSA privacy office website at *https://www.dhs.gov/privacy-documents-transportation-security-administration-tsa* for more information about TSA's collection and use of the data.

The E-Government Act of 2002, Public Law 107–347, Sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. This is formally documented in the PTA submitted to the DOT Privacy Officer. Therefore, FMCSA has not conducted a privacy impact assessment.

*L. E.O. 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*M. E.O. 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*N. E.O. 13175 (Indian Tribal Governments)*

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*O. National Technology Transfer and Advancement Act (Technical Standards)*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

*P. Environment (National Environmental Policy Act of 1969 (NEPA))*

FMCSA analyzed this rule for the purpose of NEPA (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.d. That categorical exclusion relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel.

**List of Subjects**

*49 CFR Part 383*

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

*49 CFR Part 384*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons set forth in the preamble, FMCSA amends title 49, Code of Federal Regulations, chapter III as follows.

## PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

**Authority:** 6 U.S.C. 1206, 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 2. In § 383.5:

■ a. Adopt as final without change the definitions of ''Alien'' and ''Hazardous materials'' of the interim rule published May 5, 2003 (68 FR 23844); and

■ b. Add, in alphabetical order, a definition for ''TWIC''.

The addition reads as follows:

**§ 383.5 Definitions.**

* * * * *

*TWIC* means Transportation Worker Identification Credential as that term is defined in 49 CFR 1570.3, which is the transportation security card issued by TSA under the authority of 46 U.S.C. 70105.

* * * * *

**§ 383.93 [Adopted as final and Amended]**

■ 3. Adopt as final the revision to § 383.93(b)(4) in the interim rule published May 5, 2003 (68 FR 23844) and revise paragraph (b)(4) by removing '', or'' and adding ''; or'' in its place.

■ 4. In § 383.141:

■ a. Revise paragraph (b);

■ b. Adopt as final without change paragraph (d) of the interim rule published May 5, 2003 (68 FR 23844); and

■ c. Adopt as final without change paragraph (c) of the interim rule published April 29, 2005 (70 FR 22268).

The revision reads as follows:

**§ 383.141 General.**

* * * * *

(b) *Prohibition.* A state may not issue, renew, upgrade, or transfer a hazardous material endorsement for a CDL to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless—

(1) The Transportation Security Administration has determined that the individual does not pose a security risk warranting denial of the endorsement; or

(2) The individual holds a valid TWIC.

* * * * *

## PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 383 continues to read as follows:

**Authority:** 6 U.S.C. 1206, 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

### § 384.233 [Adopted as final]

■ 6. Adopt as final without change § 384.233 of the interim rule published May 5, 2003 (68 FR 23844).

Issued under authority delegated in 49 CFR 1.87.

Dated: September 18, 2019.

**Raymond P. Martinez,**

*Administrator.*

[FR Doc. 2019–20584 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[Docket No. 190220141–9141–01]**

**RIN 0648–PIR–A001**

## International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Closure of Purse Seine Fishery in the ELAPS in 2019

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

**ACTION:** Temporary rule; fishery closure.

**SUMMARY:** NMFS announces that the purse seine fishery in the Effort Limit Area for Purse Seine, or ELAPS, will close as a result of reaching the 2019 limit on purse seine fishing effort in the ELAPS. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

**DATES:** Effective 00:00 on October 9, 2019 Universal Coordinated Time (UTC), until 24:00 on December 31, 2019 UTC.

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS Pacific Islands Regional Office, 808–725–5033.

**SUPPLEMENTARY INFORMATION:** U.S. purse seine fishing in the area of application of the Convention, or Convention Area, is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.* (Act). Regulations implementing the Act are at 50 CFR part 300, subpart O. On behalf of the Secretary of Commerce, NMFS promulgates regulations under the Act as may be necessary to carry out the obligations of the United States under the Convention, including implementation of the decisions of the Commission.

Pursuant to WCPFC Conservation and Management Measure 2018–01, NMFS issued regulations that established a limit of 1,616 fishing days that may be used by U.S. purse seine fishing vessels in the ELAPS in calendar year 2019 (see interim rule at 84 FR 37145, published July 31, 2019, to be codified at 50 CFR 300.223). The ELAPS consists of the areas of the U.S. Exclusive Economic Zone (EEZ) and the high seas that are in the Convention Area between the latitudes of 20° N and 20° S (see definition at 50 CFR 300.211). A fishing day means any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a fish aggregating device (FAD), services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch (see definition at 50 CFR 300.211).

Based on data submitted in logbooks and other available information, NMFS expects that the limit of 1,616 fishing days in the ELAPS will be reached, and in accordance with the procedures established at 50 CFR 300.223(a), announces that the purse seine fishery in the ELAPS will be closed starting at 00:00 on October 9, 2019 UTC, and will remain closed until 24:00 on December 31, 2019 UTC. Accordingly, it shall be prohibited for any fishing vessel of the United States equipped with purse seine gear to be used for fishing in the ELAPS from 00:00 on October 9, 2019 UTC until 24:00 December 31, 2019 UTC, except that such vessels will not be prohibited from bunkering in that area during that period (50 CFR 300.223(a)). Fishing means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so: (1) Searching for, catching, taking, or harvesting fish; (2) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose; (3) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; (4) engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in elements (1) through (3) of this definition, including, but not limited to, bunkering; or (5) engaging in transshipment at sea, either unloading or loading fish (see definition at 50 CFR 300.211). As noted above, bunkering will not be prohibited in the closure area during the closure period.

### Classification

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action. Compliance with the notice and comment requirement would be impracticable and contrary to the public interest, since NMFS would be unable to ensure that the 2019 limit on purse seine fishing effort in the ELAPS is not exceeded. This action is based on the best available information on U.S. purse seine fishing effort in the ELAPS. The action is necessary for the United States to comply with its obligations under the Convention and is important for the conservation and management of bigeye tuna, yellowfin tuna, and skipjack tuna in the western and central Pacific Ocean. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after the date of publication of this notice.

This action is required by 50 CFR 300.223(a) and is exempt from review under Executive Order 12866.

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

Dated: September 24, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–20998 Filed 9–30–19; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 190923–0034]**

**RIN 0648–BI95**

# Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule reduces the red grouper commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). The purpose of this rule is to continue the Gulf red grouper commercial and recreational ACL and ACT reductions implemented through emergency rulemaking in 2019 to protect the red grouper stock.

**DATES:** This final rule is effective October 31, 2019.

**ADDRESSES:** Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-modification-gulf-mexico-red-grouper-annual-catch-limits-and-annual-catch.*

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP, which includes red grouper, was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On July 19, 2019, NMFS published a proposed rule for the framework action and requested public comment (84 FR 34845). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is described below.

Unless otherwise noted, all weights described in this rule are in gutted weight.

## Background

For 2018, the red grouper commercial ACL was 8,190,000 lb (3,714,922 kg) and the commercial ACT (commercial quota) was 7,780,000 lb (3,528,949 kg); while the red grouper recreational ACL was 2,580,000 lb (1,170,268 kg) and the recreational ACT was 2,370,000 lb (1,075,014 kg).

At the October 2018 meeting, the Council received a recommendation from its Scientific and Statistical Committee (SSC) to reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. Since 2014, combined commercial and recreational Gulf red grouper landings have trended downwards from over 7.26 million lb (3.29 million kg) in 2014 to approximately 4.16 million lb (1.89 million kg) in 2017. The most recent red grouper stock assessment (Southeast Data, Assessment, and Review (SEDAR) 61), was not scheduled for completion until later in 2019. Therefore, the NMFS Southeast Fisheries Science Center (SEFSC) conducted an interim red grouper stock analysis to assist the SSC in developing harvest advice for the 2019 fishing year. This analysis suggested that the stock may be declining and supported recommending that the Council reduce the 2019 Gulf red grouper total ACL to 4.60 million lb (2.09 million kg).

In addition to the SSC's advice based on the interim analysis, the Council heard public testimony at the October 2018 meeting primarily from commercial fishermen. These fishermen expressed concern about the status of the red grouper stock, noting that red grouper are harder to catch than in previous years and that there appears to be a scarcity of legal-size and larger fish throughout the species' range on the west Florida shelf. The Council also discussed the severe red tide conditions that occurred off the Florida west coast in the summer and fall of 2018, which may have adversely affected the red grouper stock. Based on these recommendations, the Council requested that NMFS implement an emergency or interim rule to reduce the Gulf red grouper stock ACL for the 2019 fishing year to 4.60 million lb (2.09 million kg), or equal to the 2017 total red grouper landings level, whichever is less. The Council also began work on this red grouper framework action to reduce the red grouper catch limits beyond 2019.

The 2017 combined red grouper commercial and recreational landings (approximately 4.16 million lb (1.89 million kg)) were less than the SSC recommended combined ACL of 4.60 million lb (2.09 million kg). Therefore, NMFS implemented an emergency rule (84 FR 22389, May 17, 2019) to reduce the red grouper commercial and recreational ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg). The emergency rule is effective through November 13, 2019, and may be extended for a maximum of an additional 186 days.

## Management Measures Contained in This Final Rule

This final rule continues the red grouper ACLs and ACTs implemented by the emergency rule for the 2019 fishing year. Based on the framework action, the stock ACL is 4.16 million lb (1.89 million kg), which is equal to the 2017 combined red grouper commercial and recreational landings. Applying the commercial allocation of 76 percent results in a commercial ACL of 3.16 million lb (1.43 million kg). The commercial ACT is set at 95 percent of the commercial ACL, or 3.00 million lb (1.36 million kg).

For the recreational sector, 24 percent of the 4.16 million lb (1.89 million kg) total stock ACL results in a recreational ACL of 1.00 million lb (0.45 million kg). The recreational ACT is set at 92 percent of the recreational ACL, or 0.92 million lb (0.42 million kg).

The ACLs and ACTs implemented through the emergency action and continued through the promulgation of this rule are expected to benefit the stock. As described in the framework action, indicators suggest the stock may be in decline and that harvest levels need to be lowered. The stock has been assessed through SEDAR 61 and the Council's SSC is expected to make a new catch level recommendation in September 2019. The Council expects the reductions in ACLs and ACTs implemented by this final rule to lessen the impact of any possible future changes in the ACLs and ACTs in response to the information and catch level recommendation derived from SEDAR 61.

## Comments and Responses

NMFS received 15 comments on the proposed rule for the framework action.

The majority of the comments supported the proposed rule and the framework action. Some comments supporting the action suggested that additional management measures are necessary to protect the stock, such as prohibiting commercial and recreational fishing during the spawning season, reducing the recreational bag limit and season length, and increasing the commercial size limit.

Comments specific to the framework action and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

*Comment 1:* Because of the uncertainty in recreational landings estimates, additional measures such as a lower bag limit and longer seasonal closure should be implemented for the recreational sector to protect the stock.

*Response:* NMFS acknowledges that uncertainty exists in estimating recreational landings. However, NMFS does not agree that additional recreational management measures are needed at this time to protect the red grouper stock. The catch levels established through this final rule are equal to 2017 harvest levels. In addition, preliminary data show that 867,118 lb (393,318 kg), gutted weight, were landed in 2018. This is below the 1.00 million lb (0.45 million kg) ACL and 0.92 million lb (0.42 million kg) ACT implemented through this final rule. Thus, NMFS expects the 2019 recreational season to remain open all year under the current 2-fish red grouper recreational bag limit. However, should landings reach or be projected to reach the recreational ACL, NMFS is required to close the recreational sector for the remainder of the fishing year.

NMFS estimates Gulf red grouper and other reef fish recreational landings from information collected through the Marine Recreational Information Program (MRIP), Southeast Headboat Survey (SHS), Louisiana Department of Wildlife and Fisheries creel survey, and the Texas Parks and Wildlife Department creel survey. Before these data are used to monitor landings, NMFS checks for errors and generates any necessary weight estimates. With respect to private angler landings, NMFS has improved MRIP to reduce bias identified by the National Academies of Sciences by modifying both the angler intercept survey, which collects information at the dock, and the household survey, which collects information by contacting anglers at home. With respect to the for-hire component, NMFS is working to implement an electronic data reporting system that will require all federally permitted headboats and charter vessels to report landings after every trip. Currently, headboats report weekly and MRIP collects information from charter vessels randomly through a survey that is used to produce bi-monthly catch estimates. Thus, NMFS expects the accuracy of recreational landings estimate to continue to improve.

*Comment 2:* Both the commercial and recreational sectors should be closed to red grouper fishing during the spawning season.

*Response:* For this framework action, the Council only considered reducing the red grouper ACLs and ACTs. However, current regulations do protect the stock during some of the spawning season.

Based on information from the SEDAR 42 red grouper stock assessment, the majority of spawning occurs between March and June and in waters deeper than 20 fathoms. For the recreational sector, there is a February 1 through March 31 shallow-water grouper closed season seaward of a line approximating the 20 fathom contour in the eastern Gulf. Although this closure was implemented to protect gag spawning aggregations, the closed season protects other grouper species that spawn offshore during those months, including red grouper. In addition, there are areas closed to reef fish fishing in the Gulf that are in effect year-round (*e.g.,* Madison-Swanson and Steamboat Lumps) or seasonally (*e.g.,* The Edges; closed from January through April).

For the commercial sector, the individual fishing quota (IFQ) program does allow red grouper fishing year-round, but the area closures referred to previously apply. In addition, from June through August, bottom longline gear is not allowed shoreward of a line approximating the 50 fathom contour. Because the majority of landed red grouper are caught with bottom longline gear in waters shallower than 50 fathoms, this seasonal prohibition affords some protection to the spawning stock.

NMFS expects a new stock assessment (SEDAR 61) for red grouper to be complete in the fall of 2019. Based on the assessment results, the Council may take further action to protect the red grouper stock, which could include revisions to seasonal closures.

*Comment 3:* To increase protection to the red grouper stock, the commercial minimum size limit should be increased from 18 inches (45.7 cm) to 20 inches (50.8 cm) total length (TL), consistent with the current recreational minimum size limit.

*Response:* NMFS disagrees. The commercial minimum size limit was reduced from 20 inches (50.8 cm) TL through the final rule implementing Amendment 30B to the FMP in 2009 (74 FR 17603; April 16, 2009). The Council and NMFS made this change to reduce discard mortality in the commercial fishing sector. Size limit analyses showed that reducing the size limit, especially in the commercial longline component of the fishery, was expected to decrease the number of discarded fish and increase the yield-per-recruit, which benefits the stock.

*Comment 4:* Reducing the red grouper commercial quota has driven-up lease prices for allocation and harmed small IFQ fishing operations.

*Response:* NMFS recognizes that the price of allocation has likely increased as a result of the decrease in the commercial quota implemented through the emergency rule, and that allocation prices will likely continue to be higher as a result of this final rule. However, as explained previously, the purpose of this framework action is to protect the red grouper stock, which has shown signs of decline. Further, as explained in the framework action, NMFS expects the impact to those fishermen who lease allocation to be lessened by a foreseeable increase in the ex-vessel prices for red grouper.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

NMFS published the proposed rule for the framework action and prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed action. The IRFA concluded that the action would have a significant adverse impact on the average annual 330 small commercial fishing businesses and their combined 376 federally permitted fishing vessels that harvest red grouper from the Gulf.

A final regulatory flexibility analysis (FRFA) parallels the IRFA and must also include a summary of significant issues raised by public comments in response to the IRFA, any changes in the action in response to those comments or new information, a description of the steps the agency took to minimize the adverse economic impact on small entities, and why it selected the alternative adopted.

The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule. No public comments were received on the IRFA or the economic impacts of the rule more generally. NMFS has not received any new information that would affect its previous determination. As a result, the estimates and conclusions of the IRFA have not changed, and the IRFA is incorporated by reference.

An emergency rule reduced the red grouper commercial quota for 2019 to 3.00 million lb (1.36 million kg). This final rule will maintain that reduction of the red grouper quota for 2020 and beyond, unless modified by the Council. The Council considered two other alternatives to the commercial quota revision: Either no change or a reduction to 3.32 million lb (1.51 million kg). The no-action alternative has no short-term impacts on small businesses, but was not selected by the Council because it allows for declining status of the stock. The second non-selected alternative has smaller short-term costs than the selected alternative, but it may not provide for sufficient protection of the stock.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

**List of Subjects in 50 CFR Part 622**

Commercial, Fisheries, Fishing, Gulf, Recreational, Red grouper.

Dated: September 24, 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 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. Amend § 622.39 by:

■ a. Lifting the suspension on paragraph (a)(1)(iii)(C);

■ b. Revising paragraph (a)(1)(iii)(C); and

■ c. Removing paragraph (a)(1)(iii)(D).

The revision reads as follows:

### § 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper*—3.00 million lb (1.36 million kg).

* * * * *

■ 3. Amend § 622.41 by:

■ a. Lifting the suspension on paragraph (e);

■ b. Revising paragraph (e); and

■ c. Removing paragraph (r).

The revision reads as follows:

### § 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) *Red grouper*—(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The commercial ACT for red grouper is equal to the applicable quota specified in § 622.39(a)(1)(iii)(C). The applicable commercial ACL for red grouper, in gutted weight, is 3.16 million lb (1.43 million kg).

(2) *Recreational sector.* (i) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (e)(2)(i) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (e)(2)(iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (e)(2)(i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (e)(2)(ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The recreational ACL for red grouper, in gutted weight, is 1.00 million lb (0.45 million kg). The recreational ACT for red grouper, in gutted weight, is 0.92 million lb (0.42 million kg).

* * * * *

[FR Doc. 2019–21005 Filed 9–30–19; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 190312234–9412–01]**

**RIN 0648–XX012**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfers From NC to VA and ME to CT

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the States of North Carolina and Maine are transferring a portion of their respective 2019 commercial summer flounder quotas to the Commonwealth of Virginia and the State of Connecticut. These quota adjustments are necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for North Carolina, Virginia, Maine, and Connecticut.

**DATES:** Effective September 30, 2019, through December 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Laura Hansen, Fishery Management Specialist, (978) 281–9225.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the revised 2019 allocations were published on May 17, 2019 (84 FR 22392).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

North Carolina is transferring 12,500 lb (5,667 kg) of summer flounder commercial quota to Virginia through mutual agreement of the states. This transfer was requested to repay landings made by North Carolina-permitted vessels in Virginia under a safe harbor agreement. Maine is transferring 5,224 lb (2,369 kg) of summer flounder, its full 2019 allocation, to Connecticut through mutual agreements of the states. The revised summer flounder quotas for fishing year 2019 are now: North Carolina, 2,957,742 lb (1,341,609 kg); Virginia, 2,390,710 lb (1,084,407 kg); Maine, 0 lb (0 kg); and Connecticut, 253,119 lb (114,813 kg).

### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: September 26, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–21263 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 180713633–9174–02]**

**RIN 0648–XY039**

### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2019 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2019, through 2400 hrs, A.l.t., December 31, 2019. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 16, 2019.

**ADDRESSES:** Submit your comments, identified by NOAA–NMFS–2018–0089, 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-2018-0089,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

*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), 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).

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) (84 FR 9000, March 13, 2019).

NMFS has determined that approximately 6,000 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2019 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and

is opening directed fishing for POP in Bering Sea subarea of the BSAI, effective 1200 hrs, A.l.t., October 1, 2019, through 2400 hrs, A.l.t., December 31, 2019. This will enhance the socioeconomic well-being of harvesters dependent on POP in this area.

The Administrator, Alaska Region considered the following factors in reaching this decision: (1) The current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of POP directed fishing in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 24, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for POP in the Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 16, 2019.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 25, 2019.

**Alan D. Risenhoover,**

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

[FR Doc. 2019–21180 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 84, No. 190

Tuesday, October 1, 2019

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 205

**[Document Number AMS–NOP–11–0009; NOP–11–04PR]**

**RIN 0581–AD08**

## National Organic Program; Origin of Livestock

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) is reopening the comment period on our April 28, 2015, proposed rule to amend the origin of livestock requirements for dairy animals under the USDA organic regulations. We are reopening the proposed rule's comment period for 60 days to give all interested parties an additional opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted, as they are already incorporated into the public record and will be fully considered in any future final rule.

**DATES:** The comment period on the proposed rule that published April 28, 2015 (80 FR 23455) is reopened. We will accept comments received or postmarked on or before December 2, 2019.

**ADDRESSES:** You may submit comments on this proposed rule via the Federal eRulemaking Portal at *https://www.regulations.gov/.* You can access a copy of the proposed rule, previous public comments received, and instructions for submitting public comments by searching for docket number AMS–NOP–11–0009. Comments may also be sent to: Paul Lewis, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–So., Ag Stop 0268, Washington, DC 20250–0268; (202) 260–9151 (fax).

*Instructions:* All submissions received must include docket number AMS–NOP–11–0009 or Regulatory Information Number (RIN) 0581–AD08 for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers, state your position(s), offer any recommended language change(s), and include relevant information and data to support your position(s) (*e.g.,* scientific, environmental, manufacturing, industry, or industry impact information, etc.). All comments and relevant background documents posted to *https://www.regulations.gov* will include any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Paul Lewis, Ph.D., Director, Standards Division, National Organic Program, AMS, USDA; email *PaulI.Lewis@usda.gov;* telephone (202) 720–3252.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 28, 2015, AMS (''we'') published in the **Federal Register** (80 FR 23455) a proposed rule to clarify requirements for organic dairy farms under the USDA organic regulations. The proposed rule would add requirements about transitioning dairy animals to organic production. Please refer to the proposed rule for information about AMS' proposed changes, rationale, and analysis, including estimated costs and benefits. AMS received over 1,500 public comments on the proposed rule. These comments may be viewed at *https://www.regulations.gov* under docket number AMS–NOP–11–0009.

This document notifies the public that we are reopening the comment period on the April 28, 2015, proposed rule.

### Information Requested

AMS will accept written comments and information on our April 28, 2015, proposed rule. We will consider information and recommendations from all interested parties. In the proposed rule, AMS requested comments on the following topics:

1. The cost and benefit analysis presented, including assumptions and estimates, of limiting dairy transition to a one-time exception for a given producer;

2. Procedures that certifying agents would use under this proposal to determine whether a producer is eligible for the one-time transition; and

3. The proposed implementation approach for this rule.

If you submitted comments or information on the April 28, 2015, proposed rule (80 FR 23455), please do not resubmit them unless you have new or different information to provide. All previous public comments will remain part of the public record, and we will fully consider them in the preparation of any final determinations. These comments can be viewed at *https://www.regulations.gov* under docket number AMS–NOP–11–0009.

Any final determinations would consider all written comments and any additional information we receive during all comment periods.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via *https://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on *https://www.regulations.gov* as well.

Comments and materials we receive will be available for public inspection on *https://www.regulations.gov* under Docket No. AMS–NOP–11–0009. You may obtain copies of the proposed rule on *https://www.regulations.gov* under Docket No. AMS–NOP–11–0009, or by mail from the National Organic Program Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authority

The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*), is the authority for this action.

Dated: September 20, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–20869 Filed 9–30–19; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 966**

**[Doc. No.: AMS–SC–19–0068; SC19–966–3]**

## Tomatoes Grown in Florida; Proposed Amendments to the Marketing Order No. 966

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on proposed amendments to Marketing Order No. 966, which regulates the handling of tomatoes grown in Florida. The proposed amendments would change the Florida Tomato Committee's (Committee) size, length of the terms of office, and quorum requirements.

**DATES:** Comments must be received by December 2, 2019.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Andrew Hatch, Chief, Rulemaking Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Geronimo.Quinones@usda.gov* or *Andrew.Hatch@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 966, as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. Part 966 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of tomato producers operating within the area of production.

Section 8c(17) of the Act (7 U.S.C 608c(17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued and producers would be allowed to vote for or against the proposed Order amendments. AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering tomatoes grown in Florida.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608 (15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the ''Initial Regulatory Flexibility Analysis'' section of this proposed rule.

The Committee unanimously recommended the amendments following deliberations at two public meetings held on November 1, 2018, and February 27, 2019. The proposals would amend the Order by changing the Committee's size, the length of term of office, and quorum requirements.

### Proposal 1—Reduce Committee Size

Section 966.22 provides that the Committee consists of 12 members and, for each member of the Committee,

there must be an alternate who has the same qualifications as the member. This proposal would amend § 966.22 by reducing the size of the Committee from 12 to 10 members. The requirement that each member have an alternate with the same qualifications as the member would remain unchanged.

Since promulgation of the Order in 1995, the Florida tomato industry has seen reductions of about 80% in the number of tomato producers and 33% of registered handlers. Natural industry consolidation and land development pressure have also contributed to this decline. Decreasing the Committee's size from 12 members to 10 members would make Committee membership more reflective of today's industry and enable it to fulfill quorum requirements.

**Proposal 2—Revise Term of Office**

Section 966.23 requires Committee members and their alternates to serve for one year.

This proposal would change § 966.23 by revising the term of office for producer members from one year to two years beginning on August 1 and ending as of July 31. Currently, the nominating process for the 12 members and alternate members is conducted annually. This proposed change would reduce the annual turnover on the Committee and provide time for new members and alternates to learn the details of Committee operations and business.

**Proposal 3—Revise Quorum Requirements**

Currently, § 966.32 states that eight members of the Committee shall constitute a quorum, and the same number of concurring votes shall be required to pass any motion or approve any Committee action.

The proposed change would modify § 966.32 to allow six members to constitute a quorum. The requirement that the same number of concurring votes (six) shall be required to pass any motion or approve any Committee action would remain unchanged. The Committee is experiencing difficulties filling all seats and obtaining a quorum at meetings since several seats have been vacant. Adjusting the current requirements would enable the Committee to operate fully and lower the risk of not reaching a quorum during scheduled meetings. These changes would help to streamline the Committee's operations and increase its effectiveness.

*Initial Regulatory Flexibility Analysis*

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 75 producers of Florida tomatoes in the production area and 37 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average annual price for fresh Florida tomatoes during the 2017–18 season was approximately $12.56 per 25-pound container, and total fresh shipments were 25.9 million containers. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than $7,500,000 ($12.56 times 25.9 million containers equals $325,304,000 divided by 37 handlers equals $8,792,000 per handler).

With an estimated producer price of $6.00 per 25-pound container, the number of Florida tomato producers, and assuming a normal distribution, the average annual producer revenue is above $750,000 ($6.00 times 25.9 million containers equals $155,400,000 divided by 75 producers equals $2,072,000 per producer). Thus, the majority of handlers and producers of Florida tomatoes may be classified as large entities.

The proposed amendments would change the Committee's size, the length of term of office, and quorum requirements.

The Committee unanimously recommended the proposed amendments at public meetings on November 1, 2018 and February 27, 2019. If these proposals are approved in a referendum, there would be no direct financial effects on producers or handlers. However, these proposed changes would decrease administrative costs to producers and Committee staff. This action would save time and work for producers and Committee staff, by avoiding the annual requirement to prepare multiple nomination notices and meetings, and the administrative and travel expenses that are required to carry out these annual duties.

Since 1995, the number of producers and handlers operating in the industry has decreased, which makes it difficult to find enough members to fill positions on the Committee. Decreasing the Committee's size would make it more reflective of today's industry. No economic impact is expected if the proposed amendments are approved because they would not establish any new regulatory requirements on handlers, nor would they have any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if this proposal is approved.

Alternatives to this proposal, including making no changes at this time, were considered by the Committee. Due to changes in the industry, AMS believes the proposals are justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee would enable it to satisfy membership and quorum requirements fully, thereby ensuring a more efficient and orderly flow of business.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings were widely publicized throughout the Florida tomato production area. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 1, 2018 and February 27, 2019, meetings were public, and all entities, both large and small, were encouraged to express their views on the proposals.

Interested persons are invited to submit comments on the proposed amendments to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following analysis of any comments received on the amendments in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. A final rule would then be issued to effectuate any amendments favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

*General Findings*

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 966; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 966 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 966 as hereby proposed to be amended regulates the handling of tomatoes grown in Florida and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 966 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 966 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tomatoes produced or packed in the production area; and

5. All handling of tomatoes produced or packed in the production area as defined in Marketing Order 966 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on the amendments proposed in this proposed rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

**List of Subjects in 7 CFR Part 966**

Tomatoes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

## PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 966.22 revise paragraph (a) to read as follows:

**§ 966.22 Establishment and membership.**

(a) The Florida Tomato Committee, consisting of 10 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

* * * * *

■ 3. In § 966.23 revise paragraph (a) to read as follows:

**§ 966.23 Term of office.**

(a) The term of office of committee members, and their respective alternates, shall be for 2 years and shall begin as of August 1 and end as of July 31.

* * * * *

■ 4. In § 966.32 revise paragraph (a) to read as follows:

**§ 966.32 Procedure.**

(a) Six members of the committee shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

* * * * *

Dated: September 23, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–21018 Filed 9–30–19; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0703; Product Identifier 2019–NM–106–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Services B.V. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0100 airplanes. This proposed AD was prompted by reports of smoke in the flight deck, in conjunction with the loss of electrical power. This proposed AD would require replacement of affected generator power transfer contactors (GPTCs), essential bus transfer contactors (EBTCs), and auxiliary power transfer contactors (APTCs), as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by November 15, 2019.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
• *Fax:* 202–493–2251.
• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0703.

## Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0703; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0703; Product Identifier 2019–NM–106–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

## Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0120, dated May 29, 2019 (''EASA AD 2019–0120'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0100 airplanes. The MCAI states:

> Occurrences have been reported of smoke in the cockpit on Fokker 100 aeroplanes, in conjunction with loss of electrical power. Subsequent investigation results revealed that the most likely cause of the smoke emission, as well as of power loss, was arcing inside one of the affected parts, GPTC, EBTC and APTC, located in the electrical power centre.
>
> This condition, if not corrected, could lead to further events of smoke in the cockpit, possibly resulting in excessive crew workload and/or injury to flight deck occupants.
>
> To address this potential unsafe condition, Fokker Services published the [service bulletin] SB to provide instructions to replace the affected parts.
>
> For the reasons described above, this [EASA] AD requires a one-time replacement of the affected parts with new parts.

## Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0120 describes procedures for replacing affected parts (GPTCs, EBTCs, and APTCs having part number DHR18–1) with serviceable parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the agency's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0120 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

## Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0120 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0120 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0120 that is required for compliance with EASA AD 2019–0120 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0703 after the FAA final rule is published.

## Costs of Compliance

The FAA estimates that this proposed AD affects 4 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 2 work-hours × $85 per hour = $170 | $5,400 | $5,570 | $22,280 |

## Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

## Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Fokker Services B.V.:** Docket No. FAA–2019–0703; Product Identifier 2019–NM–106–AD.

**(a) Comments Due Date**

The FAA must receive comments by November 15, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Fokker Services B.V. Model F28 Mark 0100 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical power.

**(e) Reason**

This AD was prompted by reports of smoke in the flight deck, in conjunction with the loss of electrical power. The FAA is issuing this AD to address smoke in the flight deck combined with the loss of electrical power, which could lead to excessive flightcrew workload and injury to the flightcrew.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0120, dated May 29, 2019 (''EASA AD 2019–0120'').

**(h) Exceptions to EASA AD 2019–0120**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0120 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0120 does not apply to this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(j) Related Information**

(1) For information about EASA AD 2019–0120, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0120 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0703.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

Issued in Des Moines, Washington, on September 19, 2019.

**Michael Kaszycki,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–21221 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2019–0705; Product Identifier 2019–NM–098–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD was prompted by reports of cracks in the bear strap between certain stations, sometimes common to fasteners in the gap cover and emanating from rough sanding marks found on the surface of the bear strap. This proposed AD would require inspections of the fuselage skin and bear strap at the forward galley door between certain stations for cracks, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by November 15, 2019.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0705.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0705; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Michael Bumbaugh, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3522; email: *michael.bumbaugh@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0705 Product Identifier 2019–NM–098–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

### Discussion

The FAA has received reports of cracks in the bear strap from station (STA) 290 to STA 296, and between S–8R and S–9R, sometimes common to fasteners in the gap cover and emanating from rough sanding marks found on the surface of the bear strap. Bear strap cracking is the result of poor workmanship during production after the skin and bear strap hot bond process. The FAA has determined that the cracking is occurring in the bear strap, where the adhesive bond flash removal was performed with an abrasive material. Cracking of the bear strap, if not addressed, could result in severing of the bear strap, possibly leading to uncontrolled decompression of the airplane and loss of structural integrity of the airplane.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019. This service information describes procedures for inspecting for cracks of the fuselage skin and bear strap at the forward galley door between certain stations, through the use of two alternative inspection methods: (1) Internal and external general visual inspections and internal surface high frequency eddy current (HFEC) inspections, and (2) external general visual and external eddy current inspections, and applicable on-condition actions. On-condition actions include inspections for cracks, HFEC inspections for cracks, low frequency eddy current (LFEC) inspections for cracks, and repair, depending on the inspection method selected. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0705.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 752 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS: OPTION 1

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Internal general visual inspection | 11 work-hours × $85 per hour = $935 | $0 | $935 | $703,120. |
| External general visual inspection | 1 work-hour × $85 per hour = $85 | 0 | $85 | $63,920. |
| Internal Surface HFEC inspections | 3 work-hours × $85 per hour = $255 per inspection cycle. | 0 | $255 per inspection cycle. | $191,760 per inspection cycle. |

ESTIMATED COSTS FOR REQUIRED ACTIONS: OPTION 2

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| External general visual inspection | 1 work-hour × $85 per hour = $85 | $0 | $85 | $63,920. |
| External LFEC and HFEC inspections | 18 work-hours × $85 per hour = $1,530 per inspection cycle. | 0 | $1,530 per inspection cycle. | $1,150,560 per inspection cycle. |

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2019–0705 Product Identifier 2019–NM–098–AD.

**(a) Comments Due Date**

The FAA must receive comments by November 15, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of cracks in the bear strap from station (STA) 290 to STA 296, and between S–8R and S–9R, sometimes common to fasteners in the gap cover and emanating from rough sanding marks found on the surface of the bear strap. The FAA is issuing this AD to address cracking of the bear strap, which could result in severing of the bear strap, possibly leading to uncontrolled decompression of the airplane and loss of structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert

Requirements Bulletin 737–53A1383 RB, dated May 9, 2019.

**Note 1 to paragraph (g) of this AD:** Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1383, dated May 9, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019.

**(h) Exceptions to Service Information Specifications**

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1383 RB,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1383 RB'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 737–53A1383 RB, dated May 9, 2019, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(j) Related Information**

(1) For more information about this AD, contact Michael Bumbaugh, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3522; email: *michael.bumbaugh@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 16, 2019.

**Suzanne Masterson,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–21187 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2019–0688; Airspace Docket No. 18–AGL–25]**

**RIN 2120–AA66**

## Proposed Amendment of VOR Federal Airways V–11 and V–275 in the Vicinity of Bryan, OH, and Defiance, OH, Respectively

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–11 by redefining the EDGEE fix in the vicinity of Bryan, OH, and V–275 by redefining the KLOEE fix in the vicinity of Defiance, OH. These modifications are necessary due to the planned decommissioning of the VOR portion of the Waterville, OH (VWV), VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Waterville VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before November 15, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0688; Airspace Docket No. 18–AGL–25 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0688; Airspace Docket No. 18–AGL–25) and be submitted in triplicate to the Docket Management Facility (see

**ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0688; Airspace Docket No. 18–AGL–25.'' The postcard will be date/time stamped and returned to the commenter.

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

## Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## Background

The FAA is planning decommissioning activities for the VOR portion of the Waterville, OH (VWV), VOR/DME in May 2020, as one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Waterville, OH, VOR/DME NAVAID is planned for decommissioning, the DME portion is being retained. The only ATS route dependencies to the Waterville VOR are VOR Federal airways V–11 and V–275.

With the planned decommissioning of the Waterville VOR, the FAA has determined it prudent to retain V–11 and V–275, and to simply redefine the component NAVAID radials that make up the EDGEE fix on V–11 and the KLOEE fix on V–275. By redefining the intersecting NAVAID radials that make up the fixes, instrument flight rules traffic and visual flight rules pilots who elect to navigate via the airways will be able to continue to use V–11 and V–275 as charted.

Additionally, the Cincinnati VOR/Tactical Air Navigation (VORTAC) NAVAID listed in the V–275 description is actually located in Covington, Kentucky. As such, the state abbreviation for the NAVAID listed in the description should reflect the abbreviation ''KY'' instead of ''OH''. This editorial correction to the V–275 description is also included in this proposed action.

## The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airways V–11 and V–275. The planned decommissioning of the Waterville, OH, VOR has made this action necessary. The proposed VOR Federal airway changes are outlined below.

*V–11:* V–11 currently extends between the Brookley, AL, VORTAC and the intersection of the Fort Wayne, IN, VORTAC 038° and Waterville, OH, VOR/DME 273° radials (EDGEE fix). The FAA proposes to amend the EDGEE fix in the airway description to describe it as the intersection of the existing Fort Wayne VORTAC 038° radial and the Flag City, OH, VORTAC 308°(T)/310°(M) radial. The unaffected portions of the existing airway would remain as charted.

*V–275:* V–275 currently extends between the Cincinnati, KY, VORTAC and the intersection of the Dayton, OH, VOR/DME 007° and the Waterville, OH, VOR/DME 246° radials (KLOEE fix). The FAA proposes to amend the KLOEE fix in the airway description to describe it as the intersection of the existing Dayton, OH, VOR/DME 007° radial and the Flag City, OH, VORTAC 313°(T)/315°(M) radial. Additionally, an editorial correction is included to change the state abbreviation for the Cincinnati VORTAC listed in the description from ''OH'' to ''KY''. The unaffected portions of the existing airway would remain as charted.

All radials in the route descriptions below that are unchanged are stated in True degrees. Radials that are stated in True (T) and Magnetic (M) degrees are new computations based on available NAVAIDS.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

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

## Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and

Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019 and effective September 15, 2019, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–11 [Amended]**

From Brookley, AL; Greene County, MS; INT Greene County 315° and Magnolia, MS, 133° radials; Magnolia; Sidon, MS; Holly Springs, MS; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Brickyard, IN; Marion, IN; Fort Wayne, IN; to INT Fort Wayne 038° and Flag City, OH, 308°(T)/310°(M) radials.

* * * * *

**V–275 [Amended]**

From Cincinnati, KY; INT Cincinnati 006° and Dayton, OH, 207° radials; Dayton; to INT Dayton 007° and Flag City, OH, 313°(T)/315°(M) radials.

* * * * *

Issued in Washington, DC, on September 25, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–21194 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2019–0625; Airspace Docket No. 19–AWP–2]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace; Redding, CA

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace designated as an extension to a Class D or Class E surface area, and Class E airspace extending upward from 700 feet above the surface at Redding Municipal Airport, Redding CA. This action also proposes to remove Class E airspace extending upward from 1,200 feet above the surface as this airspace is wholly contained within the Rogue Valley en route airspace and duplication is not necessary. Additionally, this action proposes to update the geographic coordinates of the airport to match the FAA's database. Lastly, this action proposes to remove the Redding VOR/DME and the Lassen NDB and the extensions associated with those navigational aids from the legal description of the airspace. Removing the VOR/DME and NDB simplifies the airspace's legal description. These changes are necessary to accommodate airspace redesign for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before November 15, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0625; Airspace Docket No. 19–AWP–2, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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

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

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

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Redding Municipal Airport, Redding, CA, to ensure safety and management of Instrument Flight Rules (IFR) operations at the airport.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0625; Airspace

Docket No. 19–AWP–2''. The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRMs**

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

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

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace designated as an extension to a Class D or Class E surface area within 2.3 miles west and 2.5 miles east of the 193° bearing from the Redding Municipal Airport, extending from the 4.3-mile radius of the airport to 7.3 miles south of the airport. This action also proposes to amend the Class E airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the airport and within 1.1 miles west and 1 mile east of the 360° bearing from the airport, extending from the 6.8 mile radius to 12.5 miles north of the airport and within 8.1 miles west and 4 miles east of the 193° bearing extending from the airport to 16 miles south of the Redding Municipal Airport. Additionally, this action proposes to remove Class E airspace extending upward from 1,200 feet above the surface as this airspace is wholly contained within the Rogue Valley en route airspace and duplication is not necessary. Lastly, this action proposes to remove the Redding VOR/DME and the Lassen NDB and the extensions associated with those navigational aids from the legal description of the airspace. Removing the VOR/DME and NDB simplifies the airspace's legal description.

Class E airspace designations are published in paragraphs 6004 and 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

* * * * *

**AWP CA E4 Redding, CA**

Redding Municipal Airport, CA
(Lat. 40°30′32″ N, long. 122°17′36″ W)

That airspace extending upward from the surface within 2.3 miles west and 2.5 miles east of the 193° bearing from the airport, extending from the 4.3-mile radius of airport to 7.3 miles south of the Redding Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

**AWP CA E5 Redding, CA**

Redding Municipal Airport, CA
(Lat. 40°30′32″ N, long. 122°17′36″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the airport and within 1.1 miles west and 1 mile east of the 360° bearing from the airport, extending from the 6.8 mile radius to 12.5 miles north of the airport and within 8.1 miles west and 4 miles east of the 193° bearing extending from the airport to 16 miles south of the Redding Municipal Airport.

Issued in Seattle, Washington, on September 24, 2019.

**Shawn M. Kozica,**

*Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2019–21286 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

## Initiation of Review of Management Plan for Channel Islands National Marine Sanctuary; Intent To Conduct Scoping and Prepare Draft Environmental Analysis and Management Plan

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Initiation of review of management plan; intent to conduct scoping and prepare environmental analysis under the National Environmental Policy Act.

**SUMMARY:** In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended (NMSA), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the Channel Islands National Marine Sanctuary (CINMS or sanctuary) management plan, to evaluate substantive progress toward implementing the goals of the sanctuary, and to make revisions to the management plan as necessary to fulfill the purposes and policies of the NMSA. NOAA anticipates management plan changes will require preparation of an environmental analysis under the National Environmental Policy Act (NEPA). NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, tribes and government agencies on the scope, types, and significance of issues related to the CINMS management plan and the proper scope of environmental analysis for the management plan review. The scoping meetings are scheduled as detailed below under **DATES**.

**DATES:** Written comments should be received on or before November 15, 2019. Public scoping meetings will be held on:

(1) Tuesday, October 22, 2019, 6–8 p.m., at Faulkner Gallery, Santa Barbara Public Library, 40 E Anapamu St., Santa Barbara, CA 93101.

(2) Wednesday, October 23, 2019, 6–8 p.m., at Poinsettia Pavilion, 3451 Foothill Road, Ventura, CA 93003.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NOS–2019–0110, 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-NOS-2019-0110,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* UCSB Ocean Science Education, Building 514/MC 6155, Santa Barbara, California 93106, Attn: Chris Mobley, Superintendent.

*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 NOAA. 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 personally identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Michael Murray, 805–893–6418, *cinmsmanagementplan@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Channel Islands National Marine Sanctuary (CINMS or sanctuary) was designated in October 1980. It spans 1,470 square miles (1,110 square nautical miles) of southern California marine waters surrounding five offshore islands. The sanctuary boundary begins at the Mean High Water Line and extends seaward to a distance of approximately six nautical miles from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock. CINMS is administered by NOAA, within the U.S. Department of Commerce, and was designated to conserve, protect, and enhance the biodiversity, ecological integrity, and cultural legacy of marine resources surrounding the Channel Islands for current and future generations. Sanctuary programs in education, conservation, science, and stewardship help protect CINMS and its nationally-significant resources, while promoting public use and enjoyment through compatible human activities.

The current CINMS management plan was published in 2009, and is available on the internet here: *https://channelislands.noaa.gov/management/manplan/welcome.html.*

In 2018, NOAA completed an internal assessment of progress toward implementation of the 2009 management plan. The assessment found that 89% (123 of 138 activities) of the management plan's activities had been fully or partially completed or were still being implemented as ongoing functions, while 11% (15 of 138 activities) were not yet started or had been placed on hold. Results of the 2018 internal assessment were discussed at a public meeting of the sanctuary advisory council in May 2018.

Reviewing the CINMS management plan may result in proposed changes to existing programs and policies to address contemporary issues and challenges, and to better protect and manage the sanctuary's resources and qualities. The review process is composed of four major stages: (1) Information collection and characterization; (2) preparation and release of a draft management plan and environmental document under NEPA, and any proposed amendments to the regulations; (3) public review and comment; and (4) preparation and release of a final management plan and environmental document, and any final amendments to the regulations, if applicable. NOAA will also address other statutory and regulatory requirements that may be required pursuant to the Endangered Species Act (ESA), Marine Mammal Protection Act, Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), and tribal consultation responsibilities under Executive Order 13175.

### Condition Report

To inform the management plan review, in 2019, NOAA updated the CINMS Condition Report, which was first published in 2009. The new condition report provides an updated summary of sanctuary resources, drivers and pressures on those resources, current conditions and trends for resources, and existing management responses to identified pressures, and introduces a new section on ecosystem services. The report uses quantitative data gathered through 2016, expert scientific input, and a focus on select ecosystem indicators to update the conditions and changes in water quality, habitat, living resources, and maritime archaeological resources in the sanctuary. Overall, the condition report

indicates that sanctuary resources are doing well in comparison to other parts of the world's ocean. Many sanctuary resources are showing relative stability or improvement since 2009, including water quality (which is safe for swimming and recreation), nutrient levels, shoreline and seafloor habitats, many fish species, overall native sanctuary biodiversity, and the maritime archaeological resources. The 2019 condition report also identifies some pressures and activities that have impacts on sanctuary resources, such as vessel traffic, introduction of non-native species, ocean noise, marine debris, harmful algal blooms, and climate-driven changes to ocean conditions. An ecosystem services assessment is introduced to the condition report, as well as an ecosystem assessment independently authored by members of the Chumash community. The 2019 condition report is available on the internet at: *https://sanctuaries.noaa.gov/science/condition/cinms/welcome.html.*

**Preliminary Priority Topics**

NOAA has prepared a preliminary list of priority topics to consider during the CINMS management plan review process. NOAA is interested in public comment on these topics, as well as any other issues of interest that are relevant to the CINMS management plan review (including additional topics raised through public comment, and tribal and interagency consultation).

*Partnership-Based Management*

Through collaborative partnerships with other federal and state agencies, universities, and many other organizations, NOAA is interested in providing effective and coordinated management of marine resources and human activities within CINMS. This includes partnerships that enhance scientific research, sustain ongoing monitoring of environmental and socioeconomic conditions, enforce regulations, share community-based initiatives, and implement effective education, outreach, and volunteer programs. NOAA seeks input on strengthening and optimizing partnerships within the sanctuary to increase management effectiveness.

*Climate-Driven Impacts*

NOAA is a leader in developing tools to educate the public education about climate change impacts on CINMS, such as ocean acidification. NOAA also measures climate change impacts in and around the sanctuary and supports partner organizations that do the same. This includes changes to pH within the sanctuary and changes to deep sea corals. With changes expected in the occurrence of cyclic and seasonal phenomena, rising sea levels, and shifts in species distributions, NOAA will look for opportunities to effectively respond by adapting operations and management approaches to mitigate climate impacts.

*Collaborative Research and Monitoring*

There is a continuing need for characterization, research, and monitoring to understand baseline conditions of marine resources and human activities, ecosystem functions, the status and trends of biological and historic resources, and changing socioeconomic conditions within CINMS. Findings from research and monitoring help inform sound management of activities in CINMS. Anticipated priority areas of scientific study for CINMS, or partner-led programs, include, but are not limited to: Improving understanding of the distribution of large transient species (*e.g.,* giant seabass and sharks); monitoring habitats of interest and concern within the sanctuary (*e.g.,* deep sea coral gardens); increasing the amount of sanctuary seafloor mapped; improving knowledge of acoustic habitats within CINMS; understanding and quantifying human use of CINMS; and tracking pollutant levels in sanctuary sediments, water samples, and fish tissues. In support of these science activities, NOAA seeks to continue working with a variety of partners aboard CINMS research vessels.

*Protection of Sanctuary Resources*

Using an ecosystem-based approach to management, NOAA examines and evaluates existing and potential resource management issues that may adversely affect sanctuary resources. CINMS regulations protect sanctuary resources while allowing for compatible uses. Anticipated priorities for resource protection activities that are either led by NOAA or supported by partner-led programs include, but are not limited to: Continued efforts to reduce the risk of lethal ship strikes to endangered whales through innovative approaches designed to elicit cooperative behavior from the shipping industry (*e.g.,* vessel speed reduction programs); detection and control actions to limit introductions of non-native species (*e.g., Undaria pinnatifida* and *Sargassum horneri*); working with partners to ensure continued protection of species and habitats within the state and federal network of marine reserves and marine conservation areas established within CINMS; assisting with efforts to restore endangered white abalone; and pursuing innovative and collaborative approaches to reduce the amount of marine debris accumulating within CINMS (*e.g.,* removal of lost fishing gear and floating plastic debris). NOAA seeks to continue and enhance its collaborative approach to enforcing federal and state rules and regulations applicable within the sanctuary to protect sanctuary resources. NOAA expects to continue developing remote technology tools (*e.g.,* shore-based radar systems and mobile applications) that make monitoring and patrol operations more streamlined and effective.

*Education, Outreach, and Citizen Science*

Enhancing public awareness and appreciation of sanctuary resources is a cornerstone of the CINMS mission. Recent initiatives and advancements offer the potential for NOAA and its partners to enhance and expand education and outreach programming to reach larger audiences. These advancements include using remote video-link technologies, developing mobile applications to enhance community science activities, improving video production, and partnering with the recreation and tourism industry. NOAA is also committed to continuing shipwreck discovery missions within the sanctuary and providing compelling public education about these maritime heritage discoveries. NOAA is seeking the public's view on developing and improving programs designed to enhance public awareness and stewardship, support environmentally responsible recreation and tourism, sustain volunteer contributions, and improve socioeconomic understanding of visitor use. NOAA is also interested in collaboratively developing educational programming in partner facilities open to public visitation. Facilities include the east wing of the Ocean Science Education Building at the University of California Santa Barbara, and the Channel Islands Boating Center in Oxnard.

**Regulatory and Boundary Changes**

In preparing for public scoping, NOAA has not identified the need for any changes to CINMS regulations, such as adjustments to the regulations or boundaries of the marine reserve and conservation area network within the sanctuary, or changes to the sanctuary's boundary. However, regulatory changes may be considered based on a review of public scoping comments and, if proposed, would be presented for public

review with the publication of a proposed rulemaking.

**Public Comments**

NOAA is interested in hearing the public's views on:

- The potential impacts of ongoing and proposed sanctuary activities discussed above, and ways to mitigate impacts to sanctuary resources.
- The preliminary priority topics discussed above, and whether these are the appropriate priority topics, or if there are additional topics NOAA should consider.
- The effectiveness of the existing management plan in meeting the mandates of the NMSA (16 U.S.C. 1431 *et seq.*) and supporting the mission and goals expressed in the current strategic plan for the National Marine Sanctuary System (available on the internet here: *https://sanctuaries.noaa.gov/about/five-year-strategy-2017-2022.html*).

**Federal Consultations**

This document also advises the public that NOAA will coordinate its consultation responsibilities under section 7 of the ESA, EFH under the Magnuson-Stevens Act, section 106 of the NHPA (16 U.S.C. 470), and Federal Consistency review under the CZMA. Through its ongoing NEPA process and the use of NEPA documents and public and stakeholder meetings, NOAA will also coordinate compliance with other federal laws.

In fulfilling its responsibility under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA's NEPA procedures; and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects on historic properties and describe them in any environmental analysis.

NOAA will also initiate communications and consultation steps with relevant federally recognized tribal governments pursuant to Executive Order 13175, Department of Commerce tribal consultation policies, and NOAA procedures for government-to-government consultation with federally recognized Indian Tribes.

**Authority:** 16 U.S.C. 1431 *et seq.*

**John Armor,**

*Director, Office of National Marine Sanctuaries.*

[FR Doc. 2019–20247 Filed 9–30–19; 8:45 am]

BILLING CODE 3510–NK–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 573

**[Docket No. FDA–2019–F–3911]**

### Evonik Corp.; Filing of Food Additive Petition (Animal Use)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification; petition for rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that Evonik Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of silicon dioxide as an anticaking agent, grinding aid, antifoaming agent, or carrier in animal feed components (ingredients, intermediate premixes, premixes, supplements, or concentrates).

**DATES:** The food additive petition was filed on July 24, 2019.

**ADDRESSES:** For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts; and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Cerrito, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *Chelsea.Cerrito@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2308) has been filed by Evonik Corp., 1707 Barrett Lakes Blvd. NW, Suite 340, Kennesaw, GA 30144. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 (21 CFR part 573) *Food Additives Permitted in Feed and Drinking Water of Animals* to provide for the safe use of silicon dioxide as an anticaking agent, grinding aid, antifoaming agent, or carrier in animal feed components (ingredients, intermediate premixes, premixes, supplements, or concentrates).

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r) because it is of a type that does not individually or cumulatively have a significant effect on the human environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: September 23, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–20958 Filed 9–30–19; 8:45 am]

BILLING CODE 4164–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[EPA–HQ–OAR–2010–0960; FRL–10000–43–OAR]**

### Call for Information: Information Related to the Development of Emission Estimating Methodologies for Animal Feeding Operations

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

**ACTION:** Call for information.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is soliciting quality-assured emissions and process data, and calculation models and methodologies that are relevant to developing emission estimating methodologies (EEMs) for emissions of volatile organic compounds (VOC) from animal feeding operations (AFOs). The EPA may use the data to supplement the emissions and process data collected under the National Air Emission Monitoring Study (NAEMS) for AFOs.

**DATES:** Information must be received on or before December 2, 2019.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR–2010–0960, 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–

2010–0960 in the subject line of the message.

• *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2010–0960.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2010–0960, 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 Call for Information, contact Mr. William Schrock, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5032; fax number: (919) 541–0516; and email address: *schrock.bill@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0960. 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–2010–0960. 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–2010–0960.

*Call for Information acronyms and abbreviations.* We use multiple acronyms and terms in this Call for Information. While this list may not be exhaustive, to ease the reading of this Call for Information and for reference purposes, the EPA defines the following terms and acronyms here:

AFOs animal feeding operations
CBI Confidential Business Information
EEMs emission estimating methodologies
NAEMS National Air Emission Monitoring Study
SAB Science Advisory Board
VOC volatile organic compounds

## I. General Information

### *A. What is the purpose of this action?*

In 2005, the EPA offered AFOs an opportunity to participate in a voluntary consent agreement (70 FR 4958, January 31, 2005) referred to as the Air Compliance Agreement. Under the Air Compliance Agreement, participating AFOs were responsible for, among other things, the funding for NAEMS—a 2-year, nationwide industry-run emissions monitoring study of the broiler, egg-layer, swine, and dairy industries. Monitoring under NAEMS began in the summer of 2007 and it occurred at 25 monitoring sites located in 10 states. The study collected process and emissions data for ammonia, hydrogen sulfide, particle pollution, and VOC from a representative sample of animal

housing structures and manure storage and treatment units across the country.

The EPA plans to use these data to develop EEMs for AFOs, which will help AFOs determine and comply with any applicable regulatory responsibilities under the Clean Air Act. Additional information regarding NAEMS can be found at: *https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.*

In the January 2005 **Federal Register** document, the EPA committed to using data generated from NAEMS and all other available, relevant data to develop EEMs. On January 19, 2011, the EPA published a call for information to obtain emissions and process data for animal confinement and manure storage and treatment processes at beef, broiler, dairy, egg-layer, swine, and turkey AFOs (76 FR 3060). Using the NAEMS data and the data obtained through the 2011 call for information, the EPA developed draft EEMs for broiler confinement operations and for open lagoons and basins at swine and dairy operations. In 2013, the EPA requested that the Science Advisory Board (SAB) conduct a review of these draft EEMs and provide feedback regarding the development of the methodologies. As noted by the SAB in their March 19, 2013, review summary, and reaffirmed by recent EPA data reviews, peer-reviewed data regarding VOC emissions from AFOs are limited.[1] Through the Call for Information in this document, the EPA is requesting that interested parties submit VOC emissions and process data available since 2011 that are relevant to the EPA's effort to develop EEMs for animal confinement and manure storage and treatment processes at broiler, dairy, egg-layer, and swine AFOs, particularly for open sources at dairy and swine operations (*e.g.,* lagoons and basins).

*B. What specific information is the EPA seeking?*

The EPA is requesting data for VOC emissions from animal confinement and manure storage and treatment processes at broiler, egg-layer, swine, and dairy AFOs and related process information. Consistent with the Air Compliance Agreement, the EPA is focusing in the near term on developing EEMs for AFOs using statistical models. However, we acknowledge the recommendation that the EPA develop a process-based modeling approach that incorporates ''mass balance'' constraints to determine emissions from AFOs, made by the National Academy of Sciences in its December 2002 final report titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs.* In their 2013 review, the SAB also recommended that the EPA develop process-based models for estimating emissions from AFOs. As noted in the EPA's 2013 response to the SAB review, we will carefully consider its recommendations and we will review all of the information available to us in developing the AFO EEMs. To ensure compatibility with the NAEMS data, the emissions and related process data provided to the EPA should be accompanied, if possible, by documentation that contains detailed descriptions of the following parameters, as applicable.

1. General information:

- Description of AFO process measured (*e.g.,* animal confinement structure; manure storage and treatment unit; land application site).
- Location of AFO process measured (*e.g.,* physical address, latitude/longitude coordinates of facility).
- Beginning and ending dates of the monitoring period.

2. Monitoring data:

- Quality assurance and quality control plan.
- Site monitoring plan.
- Test methods, instrumentation, and standard operating procedures used to collect emissions and process data measurements.
- Results of audits conducted on instruments and procedures.
- Field notes and associated documentation collected during the monitoring.
- Emissions data (unanalyzed or analyzed) and associated process data.
- Meteorological data, including average ambient temperature, relative humidity, pressure, wind speed, wind direction, and insolation (solar radiation) for each day that the study was conducted.
- Production data (*e.g.,* number of eggs produced per day or quantity of milk produced per day).
- Calculations and assumptions used to convert concentration data (*e.g.,* parts per million by volume) into mass emissions (*e.g.,* pounds per hour).

3. Animal confinement structures:

- Dimensions of structures monitored.
- Designed and permitted animal capacity.
- Type, age, number, and weight of animals contained in the confinement structure over the duration of the monitoring period.
- Manure management system (*e.g.,* pull-plug pit, scrape).
- Dates of production and manure management activities over the duration of the monitoring period.
- Ventilation method (*i.e.,* natural or mechanical).
- Calculations and assumptions used to estimate the ventilation rate of the monitored confinement structure.
- Calibration procedures for instruments (*e.g.,* flow meters, fan relays) used to collect data for calculating ventilation rate of the monitored confinement structure.
- Data on air temperature and relative humidity within the structure for each day that the study was conducted.
- Organics content of process inputs and outputs (*e.g.,* feed, water, bedding, eggs, milk).
- Organics content of manure excreted.
- Description of any control device or work practice used in the monitored structure to reduce emissions.

4. Manure storage and treatment processes:

- Type, age, number, and weight of animals contributing manure to the storage and treatment process over the monitoring period.
- Dimensions of storage/treatment unit monitored (*e.g.,* storage pile, tank, lagoon).
- Depth of settled solids in storage/treatment unit.
- Temperature, pH, and reduction/oxidation potential of manure contained in the storage/treatment unit.
- Moisture, total solids, volatile solids, organic content, total Kjeldahl nitrogen, and ammoniacal nitrogen content and pH of manure entering storage and treatment process over the monitoring period.

With regard to the format of the information, we request that emissions, process, and production data be submitted to the EPA in Microsoft® Excel® spreadsheet or Access® database format. In cases where the emissions, process, and production data correspond to time increments shorter than 1 hour, please provide sufficient information and supporting documentation with the data to allow the EPA to develop emission estimates on a per-hour and per-day basis. For all formats, please clearly label the units of measure of emissions, process, and production data submitted.

Dated: September 18, 2019.

**Anne L. Idsal,**

*Acting Assistant Administrator.*

[FR Doc. 2019–20927 Filed 9–30–19; 8:45 am]

BILLING CODE 6560–50–P

[1] *See https://www.epa.gov/afos-air/national-air-emissions-monitoring-study#naems-sab.*

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket Nos. FWS–R8–ES–2018–0106 and FWS–R8–ES–2018–0107; 4500030113]**

**RINs 1018–BD87 and 1018–BD88**

# Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination on the Proposed Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment periods.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the Bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) as threatened under the Endangered Species Act (Act). We are taking this action to extend the final determination based on substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, making it necessary to solicit additional information. Therefore, along with this announcement to extend the final determination, we are also reopening, for an additional 30 days, the comment periods for the proposed rule to list the species and the proposed rule to designate critical habitat for the species. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rules. We will submit a final listing determination to the **Federal Register** on or before April 1, 2020.

**DATES:** The comment periods on the proposed rules that published October 28, 2013 (78 FR 64358 and 78 FR 64328), are reopened. We will accept comments received or postmarked on or before October 31, 2019.

**ADDRESSES:** *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter either FWS–R8–ES–2018–0106, which is the docket number for the proposed listing determination and section 4(d) rule, or FWS–R8–ES–2018–0107, which is the docket number for the proposed critical habitat designation. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. Please ensure you have located the correct document before submitting your comments. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-deliver to: Public Comments Processing, Attn: [enter appropriate docket number: Docket No. FWS–R8–ES–2018–0106 for the proposed listing determination and section 4(d) rule, or Docket No. FWS–R8–ES–2018–0107 for the proposed critical habitat designation], U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Lee Ann Carranza, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 28, 2013, we published in the **Federal Register** (78 FR 64358) a proposed rule to list the Bi-State DPS of greater sage-grouse in California and Nevada as a threatened species under the Act (16 U.S.C. 1531 *et seq.*), with a rule issued under section 4(d) of the Act. On the same day, we published in the **Federal Register** (78 FR 64328) a proposed rule to designate critical habitat for the Bi-State DPS of greater sage-grouse. On April 23, 2015, we published in the **Federal Register** (80 FR 22828) a withdrawal of both these proposed rules. This decision was based on our conclusion that the threats to the DPS as identified in the proposed listing rule were no longer as significant as believed at the time of publication of the proposed listing rule, and that conservation plans were ameliorating threats to the DPS. Thus, we concluded that the Bi-State DPS did not meet the definition of an endangered or a threatened species throughout all or a significant portion of its range.

On March 9, 2016, Desert Survivors, the Center for Biological Diversity, WildEarth Guardians, and Western Watershed Project filed suit in the U.S. District Court for the Northern District of California. The suit challenged the withdrawal of the proposal to list the Bi-State DPS. On May 5, 2018, the court issued a decision that vacated and remanded the April 23, 2015, withdrawal decision to the Service for further consideration consistent with the order.

The court's action returns the process to the proposed rule stage, and the status of the Bi-State DPS has effectively reverted to that of a proposed species for the purposes of consultation under section 7 of the Act; it also reinstates the proposed 4(d) rule, as well as the proposed critical habitat designation for the Bi-State DPS (78 FR 64328; October 28, 2013). In accordance with the 2018 court order, on April 12, 2019 (84 FR 14909), we reopened the comment periods on the October 28, 2013, proposed rules to list the Bi-State DPS as threatened with a section 4(d) rule (78 FR 64358), and the proposed critical habitat designation for the DPS (78 FR 65328). The reopened comment periods closed on June 11, 2019.

## This 6-Month Extension

The 2018 court order set an October 1, 2019 deadline for the Service to issues its final listing determination, unless, and as consistent with section 4(b)(6) of the Act and its implementing regulations at 50 CFR 424.17(a)(1)(iv), the Service finds that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination. Under such circumstance, the deadline will be extended to April 1, 2020.

Since the October 28, 2013, publication of the proposed rules, there has been ongoing disagreement regarding the interpretation and accuracy of the best available information pertaining to the Bi-State DPS' population abundance, trend, and distribution across the six population management units through time. In particular, there has been substantial disagreement regarding the application of new population models from 2018 and 2019, and how results from these models should be interpreted in regards to the status of the species. The substantial nature of this disagreement on the current status of the species became evident during the recently reopened comment period where differing interpretations of the existing population data, in addition to new and emerging population data, were discussed by commenters. Disagreement was also evident regarding the availability of certain scientific research

products at different stages of completion for use in the ongoing species assessment. Some of the confusion can be due to the difference between the findings of preliminary and final research. Since preliminary research findings pertaining to apparent population abundance and trends are often presented at local area working group meetings, confusion or disagreement among commenters could depend on the timing of their participation. It is evident in phone calls and comment letters we received that analysis or interpretation of population abundance and trend data vary between Federal, State, and local governmental agencies; the public; and peer reviewers.

We find that there is substantial scientific disagreement about population abundance and trend data relevant to our listing determination. Therefore, in consideration of these disagreements, we have determined that a 6-month extension of the final determination of whether to list the Bi-State DPS of greater sage-grouse as threatened under the Act is necessary, and we are hereby extending the final determination for 6 months in order to solicit and consider additional information that will help to clarify these issues and to fully analyze data that are relevant to our final listing determination. With this 6-month extension, we will make a final determination on the proposed rule no later than April 1, 2020.

## Information Requested

We will accept written comments and information during this reopened comment period on our October 28, 2013, proposed rules to list the Bi-State DPS as threatened with a section 4(d) rule (78 FR 64358), and the proposed critical habitat designation for the DPS (78 FR 65328). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

In consideration of the scientific disagreements about certain data, we are particularly interested in new information and comments regarding the Bi-State DPS's biology, distribution, population size and trend, including:

(1) Habitat requirements for feeding, breeding, and sheltering;

(2) Genetics and taxonomy;

(3) Historical and current range, including distribution patterns; and

(4) Historical and current population levels, and current and projected trends.

If you submitted comments or information on the October 28, 2013, proposed rule to list the Bi-State DPS as threatened with a section 4(d) rule (78 FR 64358), or on the October 28, 2013, proposed rule to designate critical habitat for the DPS (78 FR 65328), either during the initial comment period or on any of the subsequent comment periods in 2013, 2014, or 2019, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determinations.

You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS–R8–ES–2018–0106 for the proposed listing determination and section 4(d) rule, and Docket No. FWS–R8–ES–2018–0107 for the proposed critical habitat designation. Supporting documentation we used in preparing the proposed rules is available for public inspection on *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0072 for the proposed listing determination and section 4(d) rule, or Docket No. FWS–R8–ES–2013–0042 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rules on *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0072 for the proposed listing determination and section 4(d) rule, or Docket No. FWS–R8–ES–2013–0042 for the proposed critical habitat designation, or by mail from the Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that the 2013 dockets contain documents and other information related to the proposed rules, as well as the comments received and the proposed rules themselves, while the 2018 dockets are the correct dockets for submission of comments during these reopened public comment periods (see **DATES**, above).

## Authors

The primary author of this document is the Service's Reno Fish and Wildlife Office in Reno, Nevada, in coordination with the Service's Pacific Southwest Regional Office in Sacramento, California.

## Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Dated: September 4, 2019.

**Margaret E. Everson,**

*Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2019–21385 Filed 9–27–19; 11:15 am]

BILLING CODE 4333–15–P

# Notices

Federal Register

Vol. 84, No. 190

Tuesday, October 1, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2019–0020]**

### Notice of Request To Renew an Approved Information Collection: Interstate Shipment of Meat and Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew the approved information collection regarding the voluntary cooperative interstate shipment program. The approval for this information collection will expire on January 31, 2020. FSIS has reduced the estimated burden in this information collection by 1,272 hours due to a reduction in the number of participating States.

**DATES:** Submit comments on or before December 2, 2019.

**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2019–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Interstate Shipment of Meat and Poultry.

*OMB Control Number:* 0583–0143.

*Expiration Date:* 1/31/2020.

*Type of Request:* Renewal of an approved information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and correctly labeled.

FSIS administers a voluntary cooperative inspection program under which State-inspected establishments in participating states with 25 or fewer employees are eligible to ship meat and poultry products in interstate commerce (21 U.S.C. 683 and U.S.C. 472) (9 CFR 321.3, Part 332, 381.187, and Part 381 Subpart Z). In participating States, State-inspected establishments selected to take part in this program are required to comply with all Federal standards under the FMIA and the PPIA, as well as with all State standards. These establishments receive inspection services from State inspection personnel that have been trained in the enforcement of the FMIA and PPIA.

Meat and poultry products produced under the program that have been inspected and passed by designated State personnel bear an official Federal mark of inspection and are permitted to be distributed in interstate commerce and exported to foreign countries. FSIS provides oversight and enforcement of the program.

States that are interested in participating in the cooperative interstate shipment program need to submit a request for an agreement to establish such a program through the appropriate FSIS District Office (9 CFR 332.4 and 381.514). In its request, a State must agree to comply with certain conditions in order to qualify for the interstate shipment program. The State must also: (1) Identify establishments in the State that the State recommends for initial selection into the program, if any, and (2) include documentation to demonstrate that the State is able to provide necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program. FSIS will review the State's request to determine whether to approve the State to participate in the cooperative interstate shipment program.

If a State determines that an establishment qualifies to participate in the cooperative interstate shipment program, and the State is able, and willing, to provide the necessary inspection services at the establishment, the State is to submit its evaluation of the establishment to the FSIS District Office that covers the State (74 FR 24729).

FSIS, in coordination with the State, will then decide whether to select the establishments for the program. Establishments that qualify for this program must meet all requirements under the FMIA or PPIA, and implementing regulations, including FSIS requirements for recordkeeping (9 CFR 332.5 and 381.515). Most State-inspected establishments will already have met these recordkeeping requirements, but some establishments will need to make minor adjustments to their recordkeeping in order to meet FSIS requirements.

The FSIS selected establishment coordinator (SEC) is responsible for overseeing a State's cooperative inspection program. The SEC will visit

each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the FMIA or PPIA and the implementing regulations (9 CFR 332.7 and 381.517).

The approval for this information collection will expire on January 31, 2020. FSIS has reduced the estimated burden in this information collection by 1,272 hours due to a reduction in the number of participating States. FSIS has made the following estimates based on an information collection assessment.

*Estimate of Burden:* FSIS estimates that it will take each new State an average of 40 hours to prepare and submit a request to establish a cooperative interstate shipment program.

FSIS estimates that it will take each State 24 hours to prepare and submit an evaluation for each new establishment entering the program. FSIS estimates that States will submit approximately 3 evaluations per year.

FSIS estimates that 15 establishments per year, out of the current 60 participating establishments, will spend 16 hours to modify their recordkeeping procedures to comply with Federal standards and 5 minutes per establishment to file these records. The State will need to provide these records during the initial verification visit when the FSIS SEC verifies the State nomination to select the establishment into the program. FSIS estimates 15 minutes per establishment to provide the records for the verification assessment.

*Respondents:* States and establishments.

*Estimated No. of Respondents:* 7 states and 60 establishments.

*Estimated No. of Annual Responses per Respondent:* FSIS estimates there will be one request per each new State to establish a cooperative interstate shipment program per year. There will be a one-time modification of records for each newly selected establishment whose recordkeeping does not comply with all Federal standards. The total number of estimated annual responses is 777.

*Estimated Total Annual Burden on Respondents:* 733 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

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*How To File a Complaint of Discrimination*

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410, Fax: (202) 690–7442, Email: *program.intake@usda.gov*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC.

**Carmen M. Rottenberg,**

*Administrator.*

[FR Doc. 2019–21298 Filed 9–30–19; 8:45 am]

BILLING CODE 3410–DM–P

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Performance Review Board Membership

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice.

**SUMMARY:** Notice is given of the appointment of members to a performance review board for the Architectural and Transportation Barriers Compliance Board (Access Board).

**FOR FURTHER INFORMATION CONTACT:** David M. Capozzi, Executive Director, Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0010.

**SUPPLEMENTARY INFORMATION:** Section 4314 (c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service (SES) performance review boards. The function of the boards is to review and evaluate the initial appraisal of senior executives' performance and make

recommendations to the appointing authority relative to the performance of these executives. Because of its small size, the Access Board has appointed SES career members from other federal agencies to serve on its performance review board. The members of the performance review board for the Access Board are:

- Craig Luigart, Chief Information Officer, Veterans Health Administration, Department of Veterans Affairs;
- Rebecca Bond, Chief, Disability Rights Section, Department of Justice;
- David Insinga, Chief Architect, Public Buildings Service, General Services Administration.

**David M. Capozzi,**

*Executive Director.*

[FR Doc. 2019–21245 Filed 9–30–19; 8:45 am]

**BILLING CODE 8150–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Wednesday October 9, 2019, from 3–4 p.m. EDT for the purpose of discussing civil rights in the state.

**DATES:** The meeting will be held on Wednesday, October 9, 2019, from 3–4 p.m. EDT.

*Public Call Information:* Dial: 206–800–4892 Conference ID: 699033756.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** This meeting is free and open to the public. Members of the public may join through the above listed number. Members of the public will be invited to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Advisory Committee Management Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

### Agenda

Welcome and Introductions
Discussion: Lead Poisoning of Indiana's Children
Public Comment
Adjournment

Dated: September 25, 2019.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2019–21243 Filed 9–30–19; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–889, A–489–837]**

### Certain Quartz Surface Products From India and the Republic of Turkey: Postponement of the Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

**DATES:** Applicable October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Keith Haynes or Jean Valdez at (202) 482–5139 or (202) 482–3855 (India), and Laurel LaCivita or Kyle Clahane at (202) 482–4243 or (202) 482–5449 (Republic of Turkey (Turkey)), AD/CVD Operations, Enforcement, and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 28, 2019, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of certain quartz surface products from India and Turkey.[1] Currently, the preliminary determinations are due no later than October 15, 2019.

### Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[2]

On September 16, 2019, the petitioner[3] submitted timely requests that Commerce postpone the preliminary determinations in these LTFV investigations.[4] The petitioner stated that it requested postponement because Commerce was still gathering data and questionnaire responses from

[1] *See Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigation,* 84 FR 25529 (June 3, 2019).

[2] *See* 19 CFR 351.205(e).

[3] The petitioner is Cambria Company LLC.

[4] *See* Petitioner's Letters, ''Quartz Surface Products from India: Request to Extend the Preliminary Determination,'' and ''Quartz Surface Products from the Republic of Turkey: Request to Extend the Preliminary Determination,'' dated September 16, 2019.

the foreign producers in these investigations, and additional time is necessary for interested parties to respond to further requests from Commerce.

For the reasons stated above, and because there is no compelling reason to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days. As a result, Commerce will issue its preliminary determinations in these investigations no later than December 4, 2019. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 25, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019–21289 Filed 9–30–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–842]**

### Large Residential Washers From Mexico: 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) finds that sales of large residential washers from Mexico were made at less than normal value (NV) during the period of review (POR) February 1, 2017 through January 31, 2018.

**DATES:** Applicable October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rebecca M. Janz or Maria Tatarska, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230; telephone: (202) 482–2972 or (202) 482–1562, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This review covers one producer/exporter of the subject merchandise, Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux). Commerce published the *Preliminary Results* on April 10, 2019.[1] For events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] In addition, Commerce extended the deadline for the final results by 57 days.[4] Accordingly, the deadline for the final results is now October 4, 2019.

#### Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[5]

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised and to which we respond in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

#### Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin for Electrolux.[6]

#### Final Results of the Review

As a result of this review, Commerce determines that a weighted-average dumping margin of 2.25 percent exists for Electrolux for the period February 1, 2017 through January 31, 2018.

#### Disclosure of Calculations

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

#### Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Electrolux reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero

[1] *See Large Residential Washers from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 14341 (April 10, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Large Residential Washers from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Large Residential Washers from Mexico: Extension of Deadline for Final Results of 2017–2018 Antidumping Duty Administrative Review,'' dated August 6, 2019.

[5] For a full description of the scope of the order, *see Preliminary Results* PDM at 2–4.

[6] *See* Issues and Decision Memorandum at Comment 2.

or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

We intend to issue liquidation instructions to CBP 41 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Electrolux will be equal to the weighted-average dumping margin that is established in the final results of this review; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 36.52 percent, the all-others rate established in the LTFV investigation.[7] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

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

**Administrative Protective Order (APO)**

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 24, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Margin Calculations
IV. Discussion of the Issues
Comment 1: Constructed Export Price Offset for Electrolux's Canadian Sales
Comment 2: Currency Conversion Errors in Electrolux's Macros Program
V. Recommendation

[FR Doc. 2019–21290 Filed 9–30–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

**Background**

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**Upcoming Sunset Reviews for November 2019**

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in November 2019 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

| | Department contact |
|---|---|
| **Antidumping Duty Proceedings** | |
| Non-Oriented Electrical Steel from China (A–570–996) (1st Review) | Matthew Renkey; (202) 482–2312. |
| Non-Oriented Electrical Steel from Germany (A–428–843) (1st Review) | Matthew Renkey; (202) 482–2312. |
| Non-Oriented Electrical Steel from Japan (A–588–872) (1st Review) | Matthew Renkey; (202) 482–2312. |
| Non-Oriented Electrical Steel from Republic of Korea (A–580–872) (1st Review) | Matthew Renkey; (202) 482–2312. |
| Non-Oriented Electrical Steel from Sweden (A–401–809) (1st Review) | Matthew Renkey; (202) 482–2312. |
| Non-Oriented Electrical Steel from Taiwan (A–583–851) (1st Review) | Matthew Renkey; (202) 482–2312. |
| **Countervailing Duty Proceedings** | |
| Non-Oriented Electrical Steel from China (C–570–997) (1st Review) | Joshua Poole; (202) 482–1293. |
| Non-Oriented Electrical Steel from Taiwan (C–583–852) (1st Review) | Joshua Poole; (202) 482–1293. |

**Suspended Investigations**

No Sunset Review of suspended investigations is scheduled for initiation in November 2019.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

[7] *See Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013).

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 23, 2019.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–21294 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Renewable Energy and Energy Efficiency Advisory Committee

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

**ACTION:** Notice of an open meeting.

**SUMMARY:** The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a meeting on Thursday, October 17, 2019, at the U.S. Department of Commerce Herbert C. Hoover Building in Washington, DC. The meeting is open to the public with registration instructions provided below.

**DATES:** October 17, 2019, from approximately 9:00 a.m. to 5:00 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with Victoria Gunderson at the contact information below by 5:00 p.m. EST on Thursday, October 10, 2019, in order to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

**ADDRESSES:** To register, please contact Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–7890; email: *Victoria.Gunderson@trade.gov.*

**FOR FURTHER INFORMATION CONTACT:** Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–7890; email: *Victoria.Gunderson@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered most recently on June 7, 2018. The REEEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information regarding the REEEAC is available online at *http://export.gov/reee/reeeac.*

On October 17, 2019, the REEEAC will hold the fifth in-person meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, hold subcommittee work sessions to discuss draft recommendations, and consider recommendations for approval. An agenda will be made available by October 10, 2019 upon request.

The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATE** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may be impossible to fill.

A limited amount of time before the close of the meeting will be available for 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 to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact Ms. Gunderson and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EST on Thursday, October 10, 2019. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Ms. Gunderson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries, U.S. Department of Commerce; 1401 Constitution Avenue NW; Mail Stop: 28018; Washington, DC 20230. To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EST on Thursday, October 10, 2019. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

Dated: September 25, 2019.

**Victoria Gunderson,**

*Designated Federal Officer for the REEEAC.*

[FR Doc. 2019–21268 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

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

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed topics of discussion for a public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

**DATES:** The meeting will be held on October 16, 2019, from 9:00 a.m. 12:00 p.m., Central Daylight Time (CDT).

**ADDRESSES:** The meeting on October 16 will be held at the IBC Bank Community Suite, 3rd Floor, 1200 San Bernardo Ave., Laredo, Texas 78040.

**FOR FURTHER INFORMATION CONTACT:** Richard Boll, Office of Supply Chain, Professional & Business Services

(OSCPBS), International Trade Administration. Phone: (202) 482–1135 or Email: *richard.boll@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *http://trade.gov/td/services/oscpb/supplychain/acscc/.*

*Matters to Be Considered:* Committee members are expected to continue to discuss the major competitiveness-related topics raised at the previous Committee meetings, including trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other committee business. The Office of Supply Chain, Professional & Business Services will post the final detailed agendas on its website, *http://trade.gov/td/services/oscpb/supplychain/acscc/,* at least one week prior to the meeting.

The meetings will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Richard Boll, at (202) 482–1135 or *richard.boll@trade.gov,* five (5) business days before the meeting.

Interested parties are invited to submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to the Office of Supply Chain, Professional & Business Services, 1401 Constitution Ave. NW, Room 11008, Washington, DC 20230, or email to *richard.boll@trade.gov.*

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 October 7, 2019. Comments received after October 7, 2019, will be distributed to the Committee, but may not be considered at the meeting. The minutes of the meeting will be posted on the Committee website within 60 days of the meeting.

Dated: September 24, 2019.

**Maureen Smith,**

*Director, Office of Supply Chain.*

[FR Doc. 2019–21267 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–DR–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–886]**

## Polyethylene Retail Carrier Bags 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 find that High Den Enterprises Ltd. (High Den) is not eligible for a separate rate and is therefore a part of the China-wide entity. The period of review is August 1, 2017 through July 31, 2018.

**DATES:** Applicable October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Allison Hollander or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805 or (202) 482–1690, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 14, 2019, Commerce published the *Preliminary Results* [1] of the administrative review of the antidumping duty (AD) order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China).[2] We invited interested parties to comment on these *Preliminary Results.* We received no comments from interested parties. As such, these final results are unchanged from the *Preliminary Results.*

[1] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2017–2018,* 84 FR 27756 (June 14, 2019) and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

[2] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China,* 69 FR 48201 (August 9, 2004) (*Order*).

### Scope of the Order

The products subject to the AD order on PRCBs from China, are PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bag. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive. For a complete description of the scope of the *Order, see the Preliminary Decision Memorandum.*

### Methodology

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). In the *Preliminary Results,* Commerce found that High Den failed to respond to the initial questionnaire. Therefore, Commerce preliminarily determined that High Den is not eligible for a separate rate and is therefore part of the China-wide entity. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this determination. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

### Final Results of Review

We received no comments pertaining to the *Preliminary Results.* For the Final results, we made no changes to our preliminary analysis.

### Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate

entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to apply the China-wide *ad valorem* assessment rate of 77.57 percent to all entries of subject merchandise during the POR which were exported by High Den.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter specific rate published for the most recently completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, *i.e.,* High Den, the cash deposit rate will be the China-wide rate of 77.57 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a 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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

**Notification to Interested Parties**

The final results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: September 24, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019–21291 Filed 9–30–19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-Year (Sunset) Reviews

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

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

**DATES:** Applicable (October 1, 2019).

**FOR FURTHER INFORMATION CONTACT:** Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

**Initiation of Review**

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

| DOC case No. | ITC case No. | Country | Product | Commerce contact |
|---|---|---|---|---|
| C–570–991 | 701–TA–501 | China | Chlorinated Isocyanurates (1st Review) | Matthew Renkey, (202) 482–2312. |
| A–570- 992 | 731–TA–1229 | China | Monosodium Glutamate (1st Review) | Jacqueline Arrowsmith, (202) 482–5255. |
| A–560–826 | 731–TA–1230 | Indonesia | Monosodium Glutamate (1st Review) | Jacqueline Arrowsmith, (202) 482–5255. |
| A–201–844 | 731–TA–1227 | Mexico | Steel Concrete Reinforcing Bar (1st Review). | Joshua Poole, (202) 482–1293. |
| A–552–801 | 731–TA–1012 | Socialist Republic of Vietnam. | Certain Frozen Fish Fillets (3rd Review) | Matthew Renkey, (202) 482–2312. |
| C–489–819 | 701–TA–502 | Turkey | Steel Concrete Reinforcing Bar (1st Review). | Jacqueline Arrowsmith, (202) 482–5255. |

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/*. All

submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

## Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

## Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

## Notification to Interested Parties

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: September 23, 2019.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–21292 Filed 9–30–19; 8:45 am]

BILLING CODE 3510–DS–P

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# DEPARTMENT OF COMMERCE

## International Trade Administration

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

**SUPPLEMENTARY INFORMATION:**

## Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

## Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below,

Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five

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[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

**Deadline for Particular Market Situation Allegation**

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity to Request a Review:* Not later than the last day of October 2019,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

| | Period of review |
|---|---|
| **Antidumping Duty Proceedings** | |
| AUSTRALIA: Hot-Rolled Steel Flat Products, A–602–809 | 10/1/18–9/30/19 |
| BRAZIL: | |
| Carbon and Certain Alloy Steel Wire Rod, A–351–832 | 10/1/18–9/30/19 |
| Hot-Rolled Steel Flat Products, A–351–845 | 10/1/18–9/30/19 |
| INDIA: Stainless Steel Flanges, A–533–877 | 3/28/18–9/30/19 |
| INDONESIA: Carbon and Certain Alloy Steel Wire Rod, A–560–815 | 10/1/18–9/30/19 |
| ITALY: Pressure Sensitive Plastic Tape, A–475–059 | 10/1/18–9/30/19 |
| JAPAN: Hot-Rolled Steel Flat Products, A–588–874 | 10/1/18–9/30/19 |
| MEXICO: Carbon and Certain Alloy Steel Wire Rod, A–201–830 | 10/1/18–9/30/19 |
| MOLDOVA: Carbon and Certain Alloy Steel Wire Rod, A–841–805 | 10/1/18–9/30/19 |
| REPUBLIC OF KOREA: Hot-Rolled Flat Products, A–580–883 | 10/1/18–9/30/19 |
| TAIWAN: Steel Concrete Reinforcing Bar, A–583–859 | 10/1/18–9/30/19 |
| THE NETHERLANDS: Hot-Rolled Flat Products, A–421–813 | 10/1/18–9/30/19 |
| THE PEOPLE'S REPUBLIC OF CHINA: | |
| Barium Carbonate, A–570–880 | 10/1/18–9/30/19 |
| Barium Chloride, A–570–007 | 10/1/18–9/30/19 |
| Boltless Steel Shelving Units Prepackaged For Sale, A–570–018 | 10/1/18–9/30/19 |
| Certain Cut-To-Length Carbon Steel, A–570–849 | 10/1/18–9/30/19 |
| Electrolytic Manganese Dioxide, A–570–919 | 10/1/18–9/30/19 |

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

| | Period of review |
|---|---|
| Helical Spring Lock Washers, A–570–822 | 10/1/18–9/30/19 |
| Polyvinyl Alcohol, A–570–879 | 10/1/18–9/30/19 |
| Steel Wire Garment Hangers, A–570–918 | 10/1/18–9/30/19 |
| TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod, A–274–804 | 10/1/18–9/30/19 |
| TURKEY: Hot-Rolled Steel Flat Products, A–489–826 | 10/1/18–9/30/19 |
| UNITED KINGDOM: Hot-Rolled Steel Flat Products, A–412–825 | 10/1/18–9/30/19 |
| **Countervailing Duty Proceedings** | |
| BRAZIL: | |
| Carbon and Certain Alloy Steel Wire Rod, C–351–833 | 1/1/18–12/31/18 |
| Hot-Rolled Steel Flat Products, C–351–846 | 1/1/18–12/31/18 |
| INDIA: Stainless Steel Flanges, C–533–878 | 1/23/18–12/31/18 |
| IRAN: Roasted In Shell Pistachios, C–507–601 | 1/1/18–12/31/18 |
| REPUBLIC OF KOREA: Hot-Rolled Steel Flat Products, C–580–884 | 1/1/18–12/31/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Boltless Steel Shelving Units Prepackaged For Sale, C–570–019 | 1/1/18–12/31/18 |
| **Suspension Agreements** | |
| None. | |

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2019. If Commerce does not receive, by the last day of October 2019, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

[3] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/.*

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

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 23, 2019.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–21293 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XX018]**

### Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 2020 Cage Tags

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

**ACTION:** Notice of vendor to provide fishing year 2020 cage tags.

**SUMMARY:** NMFS informs surfclam and ocean quahog individual transferable quota (ITQ) allocation holders that they will be required to purchase their fishing year 2020 (January 1, 2020–December 31, 2020) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

**FOR FURTHER INFORMATION CONTACT:** Aimee Ahles, Fishery Management Specialist, (978) 281–9373

**SUPPLEMENTARY INFORMATION:** The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Greater Atlantic Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2020 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to ITQ allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: September 26, 2019.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries,*

National Marine Fisheries Service.

[FR Doc. 2019–21278 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XV013**

### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 69 Review Workshop for Atlantic Menhaden.

**SUMMARY:** The SEDAR 69 assessment(s) of the Atlantic stock of Menhaden will consist of a series of workshops and webinars: Stock Identification (ID) Workshop; Stock ID Review Workshop; Stock ID Joint Cooperator Technical Review; Data Workshop; Assessment Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 69 Review Workshop has been scheduled for November 4, 2019, from 9 a.m. until 6 p.m.; November 5–7, 2019, from 8 a.m. until 6 p.m., and November 8, 2019, from 8 a.m. until 1 p.m. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

**ADDRESSES:**

*Meeting address:* The SEDAR 69 Review Workshop will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 571–1000.

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *kathleen.howington@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Review Workshop are as follows:

- Review the stock assessment report and determine if it is scientifically sound.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been

notified of the intent to take final action to address the emergency.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: September 25, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–21157 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–PR–A003**

### Marine Mammals; File No. 22629

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Mystic Aquarium (Responsible Party: Stephen M. Coan, Ph.D.), has applied in due form for a permit to import five beluga whales (*Delphinapterus leucas*) for scientific research.

**DATES:** Comments must be received on or before December 2, 2019.

**ADDRESSES:** The permit application is available for review online at *https://www.fisheries.noaa.gov/action/permit-application-import-5-beluga-whales-scientific-research-file-no-22629-mystic-aquarium* or upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

You may submit comments, identified by NOAA–NMFS–2019–0113, by any of the following methods:

• *Electronic Submission:* Submit electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, enter NOAA–NMFS–2019–0113 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Comment Now'' icon on the right of that line.

• *Mail:* Comments on the application should be addressed to: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; ATTN: Jolie Harrison, Chief, Permits and Conservation Division.

• *Fax:* (301) 713–0376; ATTN: Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources.

*Instructions:* Comments must be submitted by one of the above methods. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. 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.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan, Courtney Smith, or Jennifer Skidmore, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Mystic Aquarium requests to import five (5) captive-born beluga whales from Marineland of Canada (Niagara Falls, Ontario, Canada) to Mystic Aquarium (Mystic, Connecticut, U.S.A.) for scientific research purposes to contribute knowledge and inform management and recovery of beluga populations in the wild, including the depleted Sakhalin Bay-Nikolaya Bay-Amur River beluga whale stock and the endangered Cook Inlet beluga whale distinct population segment. The subject beluga whales were born at Marineland of Canada and are progeny of beluga whales that originated from the depleted Sakhalin Bay-Nikolaya Bay-Amur River stock (81 FR 74711). The proposed research would occur year-round at Mystic Aquarium or Georgia Aquarium (Atlanta, Georgia, U.S.A.) and includes investigations on (1) the neuroimmunological response to environmental and anthropogenic stressors; (2) the development of novel non-invasive techniques to assess health in free-ranging and stranded beluga whales; (3) the hearing and physiological response to anthropogenic sound; (4) morphometrics to inform photogrammetry studies; (5) diving physiology; (6) microbiome; (7) behavior and reproduction; and 8) testing of prototype telemetry devices and cameras before deployment on wild beluga whales.

To accomplish these objectives, researchers would conduct the following procedures on the five whales using trained behaviors and voluntary participation: biological sampling (blood, exhalate, saliva, swabs, feces, skin scrapes); auditory evoked potential measurements (baseline audiograms and masked hearing sessions); photogrammetry (measurements, weight, photography/video); behavioral observations; ultrasound; and deployment of suction-cup attached devices. The whales would be placed on public display incidental to the proposed research. The requested duration of the permit is five years, the maximum duration of an MMPA permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding a copy of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 24, 2019.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–21288 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XV083**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of telephonic meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Social Science Planning Team will hold a teleconference on Wednesday, November 6, 2019.

**DATES:** The teleconference will be held on Wednesday, November 6, 2019, from 8 a.m. to 12 p.m., Alaska Standard Time.

**ADDRESSES:** The meeting will be held telephonically at (907) 271–2896. A web ex link will be provided on the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/964*.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

**FOR FURTHER INFORMATION CONTACT:** Sam Cunningham, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:**

## Agenda

*Wednesday, November 6, 2019*

Agenda topics for the teleconference include: (a) Changes to Economic Data Report framework; (b) discussion of new format for data gap analysis; (c) presentation on qualitative methods used for decision-making; (d) agenda items or next in-person meeting; and (e) other business. This meeting schedule is subject to change. The final agenda will be posted at *https://meetings.npfmc.org/Meeting/Details/964*

## Public Comment

Public comment should be submitted either electronically to *https://meetings.npfmc.org/Meeting/Details/964* or through the mail: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

## Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Maria Davis at (907) 271–2809 at least 7 working days prior to the meeting date.

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

Dated: September 25, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–21161 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XR051**

## Marine Mammals; File No. 23043

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Devon Massyn, Natural History Unit, 2118 Manhattan Beach Blvd., Unit B, Redondo Beach, CA 90278, has applied in due form for a permit to conduct commercial or educational photography on California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*).

**DATES:** Written, telefaxed, or email comments must be received on or before October 31, 2019.

**ADDRESSES:** These documents are available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Shasta McClenahan, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film pinnipeds along the coasts of California and Oregon to obtain footage for a National Geographic wildlife documentary. The show will focus on predator and prey relationships and the complex web of life that draws sharks and wildlife from the vast open ocean to the west coast. Up to 60 northern elephant seals and 160 California sea lions may be harassed annually during filming activities. The applicant would film on land or while diving underwater using telephoto lenses and static cameras. Up to 50 harbor seals (*Phoca vitulina*) may be incidentally harassed during filming activities. The permit would expire July 31, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 26, 2019.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–21318 Filed 9–30–19; 8:45 am]

**BILLING CODE 3510–22–P**

# BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No: CFPB–2019–0047]**

## Privacy Act of 1974; System of Records

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of proposed Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB or Bureau), gives notice of the establishment of a Privacy Act System of Records. The new system will collect emergency contact information for current employees and contractors of the Bureau to be used in the event of an emergency.

**DATES:** Comments must be received no later than October 31, 2019. The new system of records will be effective November 12, 2019, unless the comments received result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the title and the docket number (see above), by any of the following methods:

• *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: 2019-SORN-EmergencyNotification@cfpb.gov.*

• *Mail:* Tannaz Haddadi, Acting Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

• *Hand Delivery/Courier in Lieu of Mail:* Tannaz Haddadi, Acting Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7058. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Tannaz Haddadi, Acting Chief Privacy Officer, at (202) 435–7058. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

**SUPPLEMENTARY INFORMATION:** The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, title X, established the CFPB. The CFPB will maintain the records covered by this notice. The new system of records described in this notice, ''CFPB.027—Emergency Notification System'', will collect emergency contact information for current employees and contractors of the Bureau to be used in the event of an emergency.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act'' (Dec. 2016),[1] and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.027—Emergency Notification System'' is published in its entirety below.

**SYSTEM NAME AND NUMBER:**

CFPB.027—Emergency Notification System.

**SECURITY CLASSIFICATION:**

This information system does not contain any classified information or data.

**SYSTEM LOCATION:**

Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

**SYSTEM MANAGER(S):**

Physical Security Program Manager, Administrative Operations, Operations, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552, (202) 435–7040.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Public Law 111–203; title X, sections 1012 and 1013, codified at 12 U.S.C. 5492, 5493.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this system of records is to maintain emergency contact information for Bureau personnel. The system provides for high-speed message delivery that reaches all Bureau personnel in response to threat alerts issued by the Department of Homeland Security and local emergency officials regarding weather related emergencies, or other critical situations that disrupt the operations and accessibility of a worksite. The system also enables the Bureau, emergency responders, and others to account for Bureau personnel during an emergency.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by these systems include, but are not limited to: (1) Current Bureau employees and (2) individuals authorized to perform or use services provided in Bureau facilities including contractors, consultants, detailees, and interns.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records maintained in these systems may contain contact information including, but not limited to: Name, email address, phone number, and organization/office of assignment. Individuals may voluntarily provide additional contact information through a user portal relating to their nongovernment information, such as home telephone, personal cell phone, and personal email.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from employees, contractors, consultants, detailees, interns, and volunteers, and/or their employer or sponsor.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative

[1] Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The Bureau;

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(8) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(9) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(10) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

The records are maintained in paper and electronic media. Access to electronic records is restricted to authorized personnel who have been issues non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrievable by a variety of fields including, but not limited to, name, email address, phone number, organization/office assignment, or by some combination thereof.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The Bureau will maintain computer and paper records for three years, but longer retention is authorized if required for business use.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**RECORD ACCESS PROCEDURES:**

Individuals seeking notification and access to any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: *https://www.consumerfinance.gov/foia-requests/submit-request/*.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest the content of any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: *https://www.consumerfinance.gov/privacy/amending-and-correcting-records-under-privacy-act/*.

**NOTIFICATION PROCEDURES:**

See ''Record Access Procedures'' above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

This is a newly proposed system of records.

Dated: August 22, 2019.

**Kate Fulton,**

*Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.*

[FR Doc. 2019–20724 Filed 9–30–19; 8:45 am]

BILLING CODE 4810–AM–P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Correction to the Fair Lending Report of the Bureau of Consumer Financial Protection

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Correction to the Fair Lending Report of the Bureau of Consumer Financial Protection.

**SUMMARY:** On June 28, 2019, the Bureau of Consumer Financial Protection (Bureau) released its Fair Lending Annual Report to Congress, describing the Bureau's efforts to fulfill its fair lending mandate during calendar year 2018. Also, as part of the Bureau's annual reporting requirements, the report provided a summary of enforcement activity taken in 2018 by the other Federal Financial Institutions Examination Council (FFIEC) agencies assigned with administrative enforcement responsibilities under Equal Credit Opportunity Act (ECOA). On September 24, 2019, the Bureau revised the report to correct the omission of a 2018 referral by the Federal Deposit Insurance Corporation (FDIC) to the U.S. Department of Justice (DOJ) involving national origin discrimination in violation of ECOA.

**DATES:** The Bureau released the corrected Fair Lending Annual Report to Congress on its website on September 25, 2019.

**FOR FURTHER INFORMATION CONTACT:** Patrice Alexander Ficklin, Assistant Director, Fair Lending and Equal Opportunity, at 1–855–411–2372. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

**SUPPLEMENTARY INFORMATION:** In the Bureau of Consumer Financial Protection's Fair Lending Annual Report to Congress, published on June 28, 2019, the following correction should be noted:

Pursuant to 15 U.S.C. 1691f, the Bureau is required to report annually on the enforcement actions taken by each of the FFIEC agencies assigned administrative enforcement responsibilities under the ECOA. Unfortunately, the Bureau inadvertently omitted a 2018 referral by an FFIEC agency to the DOJ involving

discrimination in violation of ECOA. As noted in Section 8.2, on page 30 of the corrected Report, two FFIEC agencies made referrals to the DOJ involving discrimination in violation of ECOA in 2018: The National Credit Union Administration made a referral to the DOJ on the basis of marital status discrimination and the FDIC made a referral to the DOJ on the basis of national origin discrimination. The report as originally published did not include the referral made by the FDIC and is hereby corrected in the text and on the chart on page 30.

The corrected Fair Lending Annual Report to Congress is available on the Bureau's website at *https://www.consumerfinance.gov/data-research/fair-lending-report-2018/*.

**Kathleen L. Kraninger,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2019–21225 Filed 9–30–19; 8:45 am]

**BILLING CODE 4810–AM–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2019–HQ–0022]**

### Submission for OMB Review; Comment Request

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** 30-day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 31, 2019.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Mr. Vlad Dorjets, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Beach Recreation Survey; OMB Control Number 0710–XXXX.

*Type of Request:* New.

*Number of Respondents:* 4,500.

*Responses per Respondent:* 1.

*Annual Responses:* 4,500.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 1,125.

*Needs and Uses:* The information collection requirement is necessary to determine National Economic Development (NED) benefits and recreation values for five recreation sites, including Miami-Dade County FL, Pinellas County FL, Collier County FL, Folly Beach SC, and San Juan Coast Line, PR. As part of this investigation, the Corps will evaluate the existing recreation demand and tourism opportunities provided by each project. The proposed methodology (design) involves an onsite intercept survey of eligible recreationist to collect data on recreational trips and activities within the region, state, and nation. The models will be used to produce empirical estimates of economic value of beach replenishment.

*Affected Public:* Individuals or Households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Vlad Dorjets.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 25, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–21179 Filed 9–30–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Amendment of the President to the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College

**AGENCY:** Department of Defense.

**ACTION:** Amendment of Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College (''the Board'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The Board's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix) and 41 CFR 102–3.50(d). The DoD is amending the Board's current charter, which was previously announced in the **Federal Register** on June 1, 2018 (83 FR 25442), to change the name to the ''Education for Seapower Advisory Board'' and to increase the number of annual meetings for the Board from one to two. The Advisory Board, the Naval Postgraduate School Subcommittee and the Naval War College Subcommittee are otherwise unchanged.

Individual members of the Board, including its two subcommittees, shall be appointed according to DoD policy and procedures to serve a term of service of one-to-four years with annual renewals. Leadership appointments for the Board and its subcommittees shall be selected from among previously approved members of the Board or subcommittee, in question, for a one-to-two year term of service, with annual renewal, which shall not exceed the individual's Board or subcommittee appointment, as appropriate.

Members of the Board and its subcommittees who are not full-time or permanent part-time Federal officers or employees, or members of the Armed Forces, will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Board members who are full-time or permanent part-time Federal officers or employees, or members of the Armed Forces, will be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members.

All members of the Board and its subcommittees are appointed to provide advice on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Board's membership about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements should be submitted to the Board's Designated Federal Officer (DFO), who will ensure that the written statements are provided to the membership for consideration.

The Board's charter and contact information for the DFO can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Dated: September 25, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–21203 Filed 9–30–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2019–OS–0009]**

### Submission for OMB Review; Comment Request

**AGENCY:** Defense Security Service (DSS), DoD.

**ACTION:** 30-day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 31, 2019.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Outside Director/Proxy Holder for Private Contractors; (1) Outside Director/Proxy Holder Nominee Package, (2) Nominating Official Package, (3) Self-Assessment Form, (4) Peer Evaluation Form, (5) Group Assessment Form, (6) OD/PH Continuous Training Certificate; 0704–XXXX.

*Type of Request:* New.

*Number of Respondents:* 1,800.

*Responses per Respondent:* 3.

*Annual Responses:* 5,400.

*Average Burden per Response:* 45 minutes.

*Annual Burden Hours:* 4,050.

*Needs and Uses:* This information collection is necessary so that DSS can provide proper monitoring and oversight of companies with Foreign Ownership, Control, or Influence (FOCI), while those companies provide services on a U.S. government contract. In order to mitigate conflict of interest risks, DSS will designate Outside Director/Proxy Holder(s) (OD/PH) for the specified company. The OD/PH will be a cleared U.S. citizen who can ensure that the foreign owner is effectively insulated from the company in classified matters of the U.S. government. The overall intent of this collection is to prevent foreign interests from influencing the company's performance of classified contracts in matters of U.S. national security.

*Affected Public:* Individuals or Households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 25, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–21166 Filed 9–30–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2019–ICCD–0091]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Fifth-Grade National Data Collection

**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

**DATES:** Interested persons are invited to submit comments on or before October 31, 2019.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0091. 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 collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@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:* Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Fifth-Grade National Data Collection.

*OMB Control Number:* 1850–0750.

*Type of Review:* A reinstatement of a previously approved information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 46,033.

*Total Estimated Number of Annual Burden Hours:* 8,655.

*Abstract:* The Early Childhood Longitudinal Study (ECLS) program, conducted by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), draws together information from multiple sources to provide rich, descriptive data on child development, early learning, and school progress. The ECLS program studies deliver national data on children's status at birth and at various points thereafter; children's transitions to nonparental care, early care and education programs, and school; and children's experiences and growth through the elementary grades. The Early Childhood Longitudinal Study, Kindergarten Class of 2022–23 (ECLS–K:2023) is the fourth cohort in the series of early childhood longitudinal studies. The study will advance research in child development and early learning by providing a detailed and comprehensive source of current information on children's early learning and development, transitions into kindergarten and beyond, and progress through school. The ECLS–K:2023 will provide data about the population of children who will be kindergartners in the 2022–23 school year, and will go beyond its predecessor kindergarten cohort studies by adding a round of data collection in the spring prior to children's kindergarten year, known as the ''preschool round.'' Collecting parent data beginning in preschool will enable the study to measure influences on children's development before entry into formal schooling, including children's home environments and access to early care and education. The ECLS–K:2023 will focus on children's early school experiences continuing through the fifth grade, and will include collection of data from parents, teachers, and school administrators, as well as direct child assessments. This request is to conduct a field test of the ECLS–K:2023 preschool data collection activities from January through October 2020, to field test the preschool data collection materials and procedures. This ECLS–K:2023 preschool field test will be followed by the kindergarten-first grade field test (planned for August–December 2021), the spring preschool national data collection (January–June 2022), and the fall (August–December 2022) and spring (March–July 2023) kindergarten national data collections—which will be requested under separate clearance submissions.

Dated: September 26, 2019.

**Stephanie Valentine,**

*PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019–21299 Filed 9–30–19; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2019–ICCD–0123]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FY 2020 Child Care Access Means Parents in School Application Package 84.335A

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before October 31, 2019.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0123. 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 Antoinette Edwards, (202) 453–7121.

**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:* FY 2020 Child Care Access Means Parents in School Application Package 84.335A.

*OMB Control Number:* 1840–0737.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Private Sector *Total Estimated Number of Annual Responses:* 350.

*Total Estimated Number of Annual Burden Hours:* 8,750.

*Abstract:* The Child Care Access Means Parents in School (CCAMPIS) Application requests information from applicants during the competitive phase. The information collected is reviewed by non-federal reviewers to determine which applicants meet the eligibility criteria to be awarded funds under the CCAMPIS Program to assist awardees with subsidizing the child care fees of qualifying student-parents enrolled at the awarded institution.

Dated: September 26, 2019.

**Kate Mullan,**

*PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019–21251 Filed 9–30–19; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of document availability.

**SUMMARY:** Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form or at the following internet address: *http://www.bpa.gov/goto/BPI.* Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form or available at the following internet address: *http://www.bpa.gov/goto/BFAI.*

**ADDRESSES:** Unbound copies of the BPI or BFAI may be obtained by sending a request to the Head of the Contracting Activity, Routing CGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Jenkins, Head of the Contracting Activity; direct telephone (503) 230–5498; or email *nmjenkins@bpa.gov.*

**SUPPLEMENTARY INFORMATION:** BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from rate payer revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles set forth in 2 CFR part 200.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for offerors to obtain information on particular purchases or financial assistance transactions.

Signed in Portland, Oregon, on September 20, 2019.

**Nicholas M. Jenkins,**

*Manager, Purchasing/Property Governance.*

[FR Doc. 2019–21295 Filed 9–30–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Extension of a Currently Approved Information Collection for the Weatherization Assistance Program

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years a currently approved collection of information with the Office of Management and Budget (OMB). The information collection request, Weatherization Assistance Program, was previously approved on February 28, 2017 under OMB Control No. 1910–5127 and its current expiration date is February 29, 2020.

**DATES:** Comments regarding this collection must be received on or before December 2, 2019. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Written comments may be sent to Christine Askew, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585 or by email at *Christine.Askew@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Christine Askew, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585 at (202) 586–8224 or by email at *Christine.Askew@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. This information collection request contains: (1) *OMB No.:* 1910–5127; (2) *Information Collection Request Title:* ''Weatherization Assistance Program (WAP)''; (3) *Type of Review:*

Extension of a Currently Approved Collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously; (5) *Annual Estimated Number of Respondents:* 57; (6) *Annual Estimated Number of Total Responses:* 513; (7) *Annual Estimated Number of Burden Hours:* 1140; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

**Statutory Authority:** Title 42, Chapter 81, Subchapter III, Part A of the United States Code (U.S.C.), (42 U.S.C. 6867(a)).

Issued in Washington, DC, September 12, 2019.

**AnnaMaria Garcia,**

*Director, Office of Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

[FR Doc. 2019–21296 Filed 9–30–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC19–45–000]**

### Commission Information Collection Activities (FERC Form 580) Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC Form 580 (Interrogatory on Fuel and Energy Purchase Practices Pursuant to Section 205 of the Federal Power Act).

**DATES:** Comments on the collection of information are due December 2, 2019.

**ADDRESSES:** You may submit comments (identified by Docket No. IC19–45–000) 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:* FERC Form 580, (Interrogatory on Fuel and Energy Purchase Practices Pursuant to Section 205 of the Federal Power Act).

*OMB Control No.:* 1902–0137.

*Type of Request:* Three-year extension of the FERC Form 580 with no changes to the current reporting requirements.

*Abstract:* The Commission collects FERC Form 580 information every other year as required under Section 205(f)(2) of the FPA as amended by Section 208 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission uses the information collected through the FERC Form 580 interrogatory to review utility purchase and cost recovery practices through automatic adjustment clauses (AACs) in order to ensure efficient use of resources.[1] The Commission uses the information to evaluate costs in individual rate filings and to supplement periodic utility audits. The public also uses the information in this manner. Without the FERC Form 580 interrogatory, the Commission would not have the requisite information available to conduct the necessary review the FPA mandates.

*Type of Respondents:* The filing must be submitted by all FERC-jurisdictional utilities owning and/or operating at least one steam-electric generating station of 50 MW or greater capacity or having a majority ownership interest in a jointly-owned steam-electric generating station of at least 50 MW. A jurisdictional utility without a cost-based tariff on file with the Commission is not required to file the form.

*Estimate of Annual Burden.*[2] The Commission estimates the annual[3] public reporting burden and cost[4] for the information collection as:

FERC FORM 580 (INTERROGATORY ON FUEL AND ENERGY PURCHASE PRACTICES PURSUANT TO SECTION 205 OF THE FEDERAL POWER ACT)

| | Number of respondents (1) | Annual number of responses per respondent (2) | Total number of responses (1) * (2) = (3) | Average burden and cost per response (4) | Total annual burden hours and total annual cost (3) * (4) = (5) | Annual cost per respondent ($) (5) ÷ (1) |
|---|---|---|---|---|---|---|
| Respondents with FACs[5]. | 29 | 0.5 | 14.5 | 103 hrs.; $8,240 ... | 1,493.5 hrs.; $119,480.00 .. | $4,120.00 |
| Respondents with AACs, but no FACs. | 9 | 0.5 | 4.5 | 20 hrs.; $1,600 ..... | 90 hrs.; $7,200.00 ..... | 800 |
| Respondents with no AACs nor FACs. | 28 | 0.5 | 14 | 2 hrs.; $160 ..... | 28 hrs.; $2,240.00 ..... | 80.00 |
| Total ..... | ..... | ..... | 33 | ..... | 1,611.5 hrs.; $128,920.00 .. | ..... |

[1] By using the data in FERC Form 580, the Commission is able to review utility purchase and cost recovery practices and ensure the resources are in compliance with Commission regulations in 18 CFR 35.14

[2] 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. See 5 CFR 1320 for additional information on the definition of information collection burden.

[3] The FERC Form 580 interrogatory is conducted every two years.

[4] The estimates for cost per response are derived using the 2019 FERC average salary plus benefits of $167,091/year (or $80.00/hour). Commission staff finds that the work done on this information collection is typically done by wage categories like those at FERC.

*Comments:* Comments are invited on: (1) Whether the collection of information are 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 estimates 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 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–21337 Filed 9–30–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7686–004]**

### Big Wood Canal Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Conduit Exemption.

b. *Project No.:* 7686–004.

c. *Date Filed:* August 22, 2019.

d. *Applicant:* Big Wood Canal Company.

e. *Name of Project:* Jim Knight Hydroelectric Project.

f. *Location:* The project is located on the South Gooding Main Canal in Gooding County, near Gooding, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Nicholas E. Josten, GeoSense LLC, 2742 Saint Charles Ave., Idaho Falls, ID 83404, (208) 528–6152.

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov*.

j. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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–7686–004.

The Commission's Rules of Practice and Procedure 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, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* Big Wood Canal Company (exemptee) proposes to construct a new powerhouse and remove the existing powerhouse. Specifically, the exemptee proposes to construct a new intake structure and a new powerhouse containing a single 475-kilowatt (kW) turbine generating unit. These project features would be located immediately downstream of the existing powerhouse. The exemptee also proposes to remove the existing intake structure and the existing powerhouse, which contains three turbine generating units with a total installed capacity of 289 kW.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number, P–7686, in the docket number field to access the document. 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 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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 deadline 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'', ''MOTION TO INTERVENE,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''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, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–21328 Filed 9–30–19; 8:45 am]

**BILLING CODE 6717–01–P**

[5] Fuel Adjustment Clause (FAC)

## 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:* EC19–115–000.
*Applicants:* Public Service Company of Colorado, SWG Colorado, LLC.
*Description:* Supplement to July 23, 2019 Joint Application for Authorization under Section 203 of the Federal Power Act of Public Service Company of Colorado, et al.
*Filed Date:* 9/19/19.
*Accession Number:* 20190920–0006.
*Comments Due:* 5 p.m. ET 10/3/19.

*Docket Numbers:* EC19–141–000.
*Applicants:* Quitman Solar, LLC.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act, et al. of Quitman Solar, LLC.
*Filed Date:* 9/24/19.
*Accession Number:* 20190924–5104.
*Comments Due:* 5 p.m. ET 10/15/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER19–2399–000.
*Applicants:* Caden Energix Hickory LLC.
*Description:* Second Supplement to July 15, 2019 Caden Energix Hickory LLC tariff filing.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5012.
*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* ER19–2644–000.
*Applicants:* Whitney Hill Wind Power, LLC.
*Description:* Supplement to August 20, 2019 Whitney Hill Wind Power, LLC tariff filing.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5056.
*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* ER19–2828–001.
*Applicants:* Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Amendment to ILDSA, Service Agreement No. 1336 in Docket No. ER19–2828 to be effective 8/21/2019.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5048.
*Comments Due:* 5 p.m. ET 10/16/19.

*Docket Numbers:* ER19–2859–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original ISA, SA No. 5473; Queue No. AC1–054 to be effective 8/27/2019.
*Filed Date:* 9/24/19.
*Accession Number:* 20190924–5085.
*Comments Due:* 5 p.m. ET 10/15/19.

*Docket Numbers:* ER19–2860–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Tariff Cancellation: Notice of Termination Lathrop EA & PA (SA 258) to be effective 11/24/2019.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5001.
*Comments Due:* 5 p.m. ET 10/16/19.

*Docket Numbers:* ER19–2861–000.
*Applicants:* Arizona Public Service Company.
*Description:* § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B to be effective 11/27/2019.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5002.
*Comments Due:* 5 p.m. ET 10/16/19.

*Docket Numbers:* ER19–2862–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2019–09–25_Termination of SA 3020 OTP–OTP (J510) to be effective 9/26/2019.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5047.
*Comments Due:* 5 p.m. ET 10/16/19.

*Docket Numbers:* ER19–2863–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Notice of Cancellation of ICSA, SA No. 4950; Queue No. AB2–089 to be effective 7/24/2019.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5076.
*Comments Due:* 5 p.m. ET 10/16/19.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES19–59–000.
*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.
*Filed Date:* 9/25/19.
*Accession Number:* 20190925–5077.
*Comments Due:* 5 p.m. ET 10/16/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–21331 Filed 9–30–19; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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:* PR17–60–004.
*Applicants:* Atmos Pipeline-Texas.
*Description:* Tariff filing per 284.123(b),(e)/: PR17–60 APT 2019 Compliance Filing—Clone to be effective 9/1/2017 under PR17–60.
*Filed Date:* 9/23/19.
*Accession Number:* 201909235034.
*Comments/Protests Due:* 5 p.m. ET 10/15/19.

*Docket Number:* PR19–77–000.
*Applicants:* New Mexico Gas Company, Inc.
*Description:* Tariff filing per 284.123(b),(e)+(g): Amended Statement of Operating Conditions to be effective 7/29/2019 under PR19-77.
*Filed Date:* 9/24/19.
*Accession Number:* 201909245100.
*Comments Due:* 5 p.m. ET 10/15/19.

*Docket Numbers:* RP19–1587–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* Annual Report of Total Penalty Revenue Credits of Enable Gas Transmission, LLC under RP19–1587.
*Filed Date:* 9/24/19.
*Accession Number:* 20190924–5061.
*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1588–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* Annual Report of Linked Firm Service Penalty Revenue Credits of Enable Gas Transmission, LLC under RP19–1588.
*Filed Date:* 9/24/19.
*Accession Number:* 20190924–5064.
*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1589–000.
*Applicants:* Enable Mississippi River Transmission, L.

*Description:* Annual Report of Penalty Revenue Credits of Enable Mississippi River Transmission, LLC under RP19–1589.

*Filed Date:* 9/24/19.

*Accession Number:* 20190924–5070.

*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1590–000.

*Applicants:* Honeoye Storage Corporation.

*Description:* Compliance filing E-Tariff Compliance Filing Adoption of NAESB Version 3.1 to be effective 9/23/2019.

*Filed Date:* 9/24/19.

*Accession Number:* 20190924–5072.

*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1591–000.

*Applicants:* Enable Mississippi River Transmission, L.

*Description:* § 4(d) Rate Filing: 2019 MRT Annual Fuel Filing to be effective 11/1/2019.

*Filed Date:* 9/24/19.

*Accession Number:* 20190924–5078.

*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1592–000.

*Applicants:* Enable Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: Fuel Tracker Filing—Effective November 1 2019 to be effective 11/1/2019.

*Filed Date:* 9/24/19.

*Accession Number:* 20190924–5080.

*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1593–000.

*Applicants:* LA Storage, LLC.

*Description:* Annual Penalty Disbursement Report of LA Storage, LLC under RP19–1593.

*Filed Date:* 9/24/19.

*Accession Number:* 20190924–5081.

*Comments Due:* 5 p.m. ET 10/7/19.

*Docket Numbers:* RP19–1594–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* Compliance filing AGT 2019 OFO Penalty Disbursement Report to be effective N/A.

*Filed Date:* 9/24/19.

*Accession Number:* 20190924–5082.

*Comments Due:* 5 p.m. ET 10/7/19.

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 25, 2019.

**Nathaniel J. Davis Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–21336 Filed 9–30–19; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8046–004]**

### Big Wood Canal Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Conduit Exemption.

b. *Project No.:* 8046–004.

c. *Date Filed:* August 22, 2019, and supplemented on September 20, 2019.

d. *Applicant:* Big Wood Canal Company.

e. *Name of Project:* Sagebrush Hydroelectric Project.

f. *Location:* The project is located on the South Gooding Main Canal in Lincoln County, near Gooding, Idaho. The project occupies federal lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Nicholas E. Josten, GeoSense LLC, 2742 Saint Charles Ave., Idaho Falls, ID 83404, (208) 528–6152.

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov*.

j. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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–8046–004.

The Commission's Rules of Practice and Procedure 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, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* Big Wood Canal Company (exemptee) proposes to construct a new powerhouse and remove the existing powerhouse. Specifically, the exemptee proposes to construct a new powerhouse containing a single 475-kilowatt (kW) turbine generating unit. The new powerhouse would be located immediately downstream of the existing intake structure, which would be retained. The exemptee also proposes to remove the approximately 400-foot-long existing, buried penstock and the existing powerhouse, which contains three turbine generating units with a total installed capacity of 315 kW. The exemptee would also excavate, along the route of the existing buried penstock, an approximately 350-foot-long open tailrace channel to return water to the South Gooding Main Canal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number, P–8046, in the docket number field to access the document. 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 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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 deadline 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'', ''MOTION TO INTERVENE,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''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, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–21335 Filed 9–30–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 14991–000]**

## Premium Energy Holdings, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 3, 2019, Premium Energy Holdings, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Haiwee Pumped Storage Project (Haiwee Project or project) to be located on Haiwee Creek, near the unincorporated community of Olancha, Inyo County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be a closed-loop pumped storage hydropower facility. The applicant proposes three alternative upper reservoirs: McCloud Reservoir, Little Cactus Reservoir, or Haiwee Canyon Reservoir. The proposed North Haiwee 2 Reservoir would be the lower reservoir for each alternative.

### Upper Reservoir Alternative 1: McCloud Reservoir

The McCloud Reservoir alternative consists of: (1) A 504-acre upper reservoir having a total storage capacity of 44,554 acre-feet at a normal maximum operating elevation of 5,260 feet mean sea level (msl); (2) a 175-foot-high, 3,068-foot-long roller compacted concrete upper reservoir dam; (3) a 2.41-mile-long, 39-foot-diameter concrete-lined headrace tunnel; (4) a 0.2-mile-long, 35-foot-diameter concrete-lined vertical shaft; (5) a 5.6-mile-long, 35-foot-diameter concrete-lined horizontal tunnel; (6) six 0..78-mile-long, 22-foot-diameter steel penstocks; (7) a 585-foot-long, 90-foot-wide, 165-foot-high concrete-lined powerhouse located in an underground cavern, housing five pump-turbine generator-motor units rated for 400 megawatts (MW) each; and (8) a 0.68-mile-long, 42-foot-diameter concrete-lined tailrace tunnel discharging into the proposed North Haiwee 2 Reservoir.

### Upper Reservoir Alternative 2: Little Cactus Reservoir

The Little Cactus Reservoir alternative consists of: (1) A 499-acre upper reservoir having a total storage capacity of 47,021 acre-feet at a normal maximum operating elevation of 4,980 feet msl; (2) a 235-foot-high, 2,836-foot-long roller compacted concrete upper reservoir dam; (3) a 1.06-mile-long, 39-foot-diameter concrete-lined headrace tunnel; (4) a 0.16-mile-long, 35-foot-diameter concrete-lined vertical shaft; (5) a 4-mile-long, 35-foot-diameter concrete-lined horizontal tunnel; (6) six 0.7-mile-long, 22-foot-diameter steel penstocks; (7) a 585-foot-long, 90-foot-wide, 165-foot-high concrete-lined powerhouse located in an underground cavern, housing five pump-turbine generator-motor units rated for 400 MW each; and (8) a 0.78-mile-long, 42-foot-diameter concrete-lined tailrace tunnel discharging into the proposed North Haiwee 2 Reservoir.

### Upper Reservoir Alternative 3: Haiwee Canyon Reservoir

The Haiwee Canyon Reservoir alternative consists of: (1) A 138-acre upper reservoir having a total storage capacity of 28,620 acre-feet at a normal maximum operating elevation of 6,160 feet msl; (2) a 595-foot-high, 2,256-foot-long roller compacted concrete upper reservoir dam; (3) a 1.64-mile-long, 31-foot-diameter concrete-lined headrace tunnel; (4) a 0.32-mile-long, 28-foot-diameter concrete-lined vertical shaft; (5) a 5.2-mile-long, 28-foot-diameter concrete-lined horizontal tunnel; (6) six 0.54-mile-long, 18-foot-diameter steel penstocks; (7) a 585-foot-long, 90-foot-wide, 165-foot-high concrete-lined powerhouse located in an underground cavern, housing five pump-turbine generator-motor units rated for 400 MW each; and (8) a 0.8-mile-long, 33-foot-diameter concrete-lined tailrace tunnel discharging into the proposed North Haiwee 2 Reservoir.

### Lower Reservoir: North Haiwee 2 Reservoir

The proposed North Haiwee 2 Reservoir would consist of: (1) A 320-acre lower reservoir having a total storage capacity 38,350 acre-feet at a normal maximum operating elevation of 3,770 feet msl; and (2) a 160-foot-high, 7,090-foot-long roller compacted concrete lower reservoir dam.

### Interconnection

For each upper reservoir alternative, project power would be transmitted to the grid via: (1) A new, 2.5-mile-long, 500 kilovolt (kV) underground transmission line extending from the

powerhouse to the proposed North Haiwee switchyard (the point of interconnection); and (2) appurtenant facilities. The estimated annual generation of the Haiwee Project under each of the alternatives would be 6,900 gigawatt-hours.

*Applicant Contact:* Victor M. Rojas, Managing Director, Premium Energy Holdings, LLC, 355 South Lemon Avenue, Suite A, Walnut, California 91789; phone: (909) 595–5314.

*FERC Contact:* Kyle Olcott; phone: (202) 502–8963.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14991–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14991) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–21332 Filed 9–30–19; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–10000–61–Region 8]**

## Settlement Agreement for Past Costs: State Painting Site, West Valley City, Utah

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

**ACTION:** Notice of proposed agreement; request for public comment.

**SUMMARY:** In accordance with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of the proposed settlement under CERCLA, between the U.S. Environmental Protection Agency (''EPA''), the Jordan Valley Water Conservancy District (JVWCD), and the Guarantee Company of North America (GCNA) (collectively, ''Settling Parties'') to settle liabilities at the State Painting Site in West Valley City, Utah.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

**DATES:** Comments must be submitted on or before October 31, 2019.

**ADDRESSES:** The proposed agreement and additional background information relating to the agreement, as well as the Agency's response to any comments are or will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado, by appointment.

Comments and requests for a copy of the proposed agreement should be addressed to Julie Nicholson, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency—Region 8, Mail Code 8SEM PAC, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6343 and should reference the State Painting Site.

**FOR FURTHER INFORMATION CONTACT:** Amelia Piggott, Senior Assistant Regional Counsel, Office of Regional Counsel, Environmental Protection Agency—Region 8, Mail Code 80RC LEC, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6410.

**SUPPLEMENTARY INFORMATION:** The proposed Settlement Agreement requires the Settling Parties to reimburse the EPA for past response costs. The Settling Parties will pay ($257,179.00) within 30 days after the Effective Date of the Proposed Agreement to the EPA. The Settling Parties consent to and will not contest the authority of the United States to enter into the Agreement or to implement or enforce its terms. The Settling Parties recognize that the Agreement has been negotiated in good faith and that the Agreement is entered into without the admission or adjudication of any issue of fact or law.

Dated: September 16, 2019.

**Betsy Smidinger,**

*Division Director, Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region VIII.*

[FR Doc. 2019–21338 Filed 9–30–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2019–0543; FRL–10000–37]**

## Pesticides; Revised Fee Schedule for Covered Applications Under the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4)

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

**ACTION:** Notice.

**SUMMARY:** EPA is publishing a revised list of pesticide registration service fees applicable to pesticide applications covered under the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4), which was signed into law and became effective March 8, 2019. As specified in the law and effective October 1, 2019, the registration service fees for covered pesticide registration applications received on or after that date will be increased by 5%. The revised fees will remain in effect through September 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Stephen A. Schaible, PRIA Coordinator, Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703)308–9362; email address: *schaible.stephen@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 requesting registration of a new pesticide product or amendment to an existing pesticide product under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), petitioning to establish a

tolerance or tolerance exemption for an active ingredient or inert ingredient under the Federal Food, Drug, and Cosmetic Act (FFDCA), or otherwise seeking a regulatory determination under FIFRA or FFDCA for certain activities specified under PRIA. 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:

- Agricultural pesticide manufacturers (NAICS code 325320)
- Antimicrobial pesticide manufacturers (NAICS code 325611, 325612)
- Antifoulant pesticide manufacturers (NAICS code 325510)
- Wood preservative manufacturers (NAICS code 325194)

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0543, 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.*

## II. Background

*A. What action is the Agency taking?*

The Pesticide Registration Improvement Act of 2003 (PRIA) established a new section 33 of FIFRA creating a registration service fee system for certain types of pesticide applications, establishment of tolerances, and certain other regulatory decisions under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 33 also created a schedule of decision review times for applications covered by the service fee system. The Agency began administering the registration service fee system for covered applications received on or after March 23, 2004.

On March 8, 2019, the Pesticide Registration Improvement Extension Act of 2018 was signed into law by the President, revising, among other things, FIFRA section 33. The new law reauthorized the service fee system through fiscal year 2023 and established fees and review times for applications received during fiscal years 2019 (as of March 8, 2019) through 2023. As required by section 33(b)(6)(A) of FIFRA, the registration service fees for covered pesticide registration applications received on or after October 1, 2019, increase by 5% (rounding up to the nearest dollar) from the fee amounts established by the law (Pub. L. 116–8).

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

The increase in these registration service fees is required by section 33(b)(6)(A) of FIFRA. The publication of these revised registration service fee schedules is required by section 33(b)(6)(C) of FIFRA as amended (U.S.C. Title 7, Ch. 6, Subchapter II, Section 136w–8).

## III. Elements of the Fee Schedule

This unit explains how to read the fee schedule tables and includes a key to terminology published with the table.

*A. The Pesticide Registration Improvement Extension Act of 2018 Fee Schedule*

The fee schedule provided in the Pesticide Registration Improvement Extension Act of 2018 identifies the registration service fees and decision times and is organized according to the organizational units of the Office of Pesticide Programs (OPP) within EPA. Thereafter, the categories within the organizational unit sections of the table are further categorized according to the type of application being submitted, the use patterns involved, or, in some cases, upon the type of pesticide that is the subject of the application. The fee categories differ by Division. Not all application types are covered by, or subject to, the fee system.

*B. Fee Schedule and Decision Review Times*

In this notice, EPA has retained the format of the tables included in the Pesticide Registration Improvement Extension Act of 2018. The schedules are presented as 19 tables, organized by OPP Division and by type of application or pesticide subject to the fee. Unit IV presents fee tables for the Registration Division (RD) (6 tables), the Antimicrobials Division (AD) (4 tables), the Biopesticides and Pollution Prevention Division (BPPD) (7 tables), Inert Ingredients (1 table), Miscellaneous (1 table).

*C. How To Read the Tables*

1. Each Table Consists of the Following Columns

- The column titled ''EPA No.'' assigns an EPA identifier to each fee category. There are 212 categories spread across the 3 Divisions. There are 70 RD categories, 36 AD categories, 79 BPPD categories, 16 inert categories, and 11 miscellaneous categories. For tracking purposes, OPP has assigned a 3-digit identifier to each category, beginning with RD categories, followed by AD, BPPD, inert and miscellaneous categories. The categories are prefaced with a letter designation indicating which Division of OPP is responsible for applications in that category (R=Registration Division, A=Antimicrobials Division, B=Biopesticides and Pollution Prevention Division, I=inert ingredients, M= miscellaneous).

The column titled ''CR No.'' cross-references the current Congressional Record category number for convenience. However, EPA will be using the categories as numbered in the ''EPA No.'' column in its tracking systems.

- The column titled ''Action'' describes what registration actions are covered by each category.
- The column titled ''Decision Review Time'' lists the decision times in months for each type of action.
- The column titled ''FY'20–FY'21 Fees ($)'' lists the registration service fee for the action for fiscal year 2020 (October 1, 2019 through September 30, 2020) and fiscal year 2021 (October 1, 2020 through September 30, 2021).

2. *The following acronyms are used in some of the tables:*

- DART—Dose Adequacy Response Team.
- DNT—Developmental Neurotoxicity.
- DfE—Design for the Environment.
- HSRB—Human Studies Review Board.
- GW/SW—Ground Water/Surface Water.
- PHI—Pre-Harvest Interval.
- PPE—Personal Protective Equipment.
- REI—Restricted Entry Interval.
- SAP—FIFRA Scientific Advisory Panel.

## IV. PRIA Fee Schedule Tables—Effective October 1, 2019

*A. Registration Division (RD)*

The Registration Division of OPP is responsible for the processing of pesticide applications and associated tolerance petitions for pesticides that

are termed ''conventional chemicals,'' excluding pesticides intended for antimicrobial uses. The term ''conventional chemical'' is a term of art that is intended to distinguish synthetic chemicals from those that are of naturally occurring or non-synthetic origin, synthetic chemicals that are identical to naturally occurring chemicals and microbial pesticides. Tables 1 through 6 cover RD actions.

TABLE 1—REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R010 | 1 | New Active Ingredient, Food use [2 3] | 24 | 790,737 |
| R020 | 2 | New Active Ingredient, Food use; reduced risk [2 3] | 18 | 658,947 |
| R040 | 3 | New Active Ingredient, Food use; Experimental Use Permit application; establish temporary tolerance; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows [3]. | 18 | 485,628 |
| R060 | 4 | New Active Ingredient, Non-food use; outdoor [2 3] | 21 | 549,366 |
| R070 | 5 | New Active Ingredient, Non-food use; outdoor; reduced risk [2 3] | 16 | 457,805 |
| R090 | 6 | New Active Ingredient, Non-food use; outdoor; Experimental Use Permit application; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows [3]. | 16 | 339,875 |
| R110 | 7 | New Active Ingredient, Non-food use; indoor [2 3] | 20 | 305,544 |
| R120 | 8 | New Active Ingredient, Non-food use; indoor; reduced risk [2 3] | 14 | 254,620 |
| R121 | 9 | New Active Ingredient, Non-food use; indoor; Experimental Use Permit application; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows [3]. | 18 | 191,444 |
| R122 | 10 | Enriched isomer(s) of registered mixed-isomer active ingredient [2 3] | 18 | 332,985 |
| R123 | 11 | New Active Ingredient, Seed treatment only; includes agricultural and non-agricultural seeds; residues not expected in raw agricultural commodities [2 3]. | 18 | 495,455 |
| R125 | 12 | New Active Ingredient, Seed treatment; Experimental Use Permit application; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows [3]. | 16 | 339,875 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use.

Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 2—REGISTRATION DIVISION—NEW USES

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R130 | 13 | First food use; indoor; food/food handling [2 3] | 21 | 201,017 |
| R140 | 14 | Additional food use; Indoor; food/food handling [3 4] | 15 | 46,906 |
| R150 | 15 | First food use [2 3] | 21 | 332,960 |
| R155 | 16 (new) | First food use, Experimental Use Permit application; a.i. registered for non-food outdoor use [3 4]. | 21 | 277,466 |
| R160 | 17 | First food use; reduced risk [2 3] | 16 | 277,466 |
| R170 | 18 | Additional food use [3 4] | 15 | 83,317 |
| R175 | 19 | Additional food uses covered within a crop group resulting from the conversion of existing approved crop group(s) to one or more revised crop groups [3 4]. | 10 | 69,431 |
| R180 | 20 | Additional food use; reduced risk [3 4] | 10 | 69,431 |
| R190 | 21 | Additional food uses; 6 or more submitted in one application [3 4] | 15 | 499,895 |

TABLE 2—REGISTRATION DIVISION—NEW USES—Continued

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R200 | 22 | Additional Food Use; 6 or more submitted in one application; Reduced Risk [3 4]. | 10 | 416,580 |
| R210 | 23 | Additional food use; Experimental Use Permit application; establish temporary tolerance; no credit toward new use registration [3 4]. | 12 | 51,436 |
| R220 | 24 | Additional food use; Experimental Use Permit application; crop destruct basis; no credit toward new use registration [3 4]. | 6 | 20,830 |
| R230 | 25 | Additional use; non-food; outdoor [3 4] | 15 | 33,299 |
| R240 | 26 | Additional use; non-food; outdoor; reduced risk [3 4] | 10 | 27,749 |
| R250 | 27 | Additional use; non-food; outdoor; Experimental Use Permit application; no credit toward new use registration [3 4]. | 6 | 20,830 |
| R251 | 28 | Experimental Use Permit application which requires no changes to the tolerance(s); non-crop destruct basis [3]. | 8 | 20,830 |
| R260 | 29 | New use; non-food; indoor [3 4] | 12 | 16,083 |
| R270 | 30 | New use; non-food; indoor; reduced risk [3 4] | 9 | 13,403 |
| R271 | 31 | New use; non-food; indoor; Experimental Use Permit application; no credit toward new use registration [3 4]. | 6 | 10,212 |
| R273 | 32 | Additional use; seed treatment; limited uptake into Raw Agricultural Commodities; includes crops with established tolerances (*e.g.,* for soil or foliar application); includes food and/or non-food uses [3 4]. | 12 | 52,968 |
| R274 | 33 | Additional uses; seed treatment only; 6 or more submitted in one application; limited uptake into raw agricultural commodities; includes crops with established tolerances (*e.g.,* for soil or foliar application); includes food and/or non-food uses [3 4]. | 12 | 317,797 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use.

Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

[4] Amendment applications to add the new use(s) to registered product labels are covered by the base fee for the new use(s). All items in the covered application must be submitted together in one package. Each application for an additional new product registration and new inert approval(s) that is submitted in the new use application package is subject to the registration service fee for a new product or a new inert approval. However, if a new use application only proposes to register the new use for a new product and there are no amendments in the application, then review of one new product application is covered by the new use fee. All such associated applications that are submitted together will be subject to the new use decision review time. Any application for a new product or an amendment to the proposed labeling (a) submitted subsequent to submission of the new use application and (b) prior to conclusion of its decision review time and (c) containing the same new uses, will be deemed a separate new-use application, subject to a separate registration service fee and new decision review time for a new use. If the new-use application includes non-food (indoor and/or outdoor), and food (outdoor and/or indoor) uses, the appropriate fee is due for each type of new use and the longest decision review time applies to all of the new uses requested in the application.

Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screen, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new use application.

TABLE 3—REGISTRATION DIVISION—IMPORT AND OTHER TOLERANCES

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R280 | 34 | Establish import tolerance; new active ingredient or first food use [2] | 21 | 335,026 |
| R290 | 35 | Establish Import tolerance; Additional new food use | 15 | 67,007 |
| R291 | 36 | Establish import tolerances; additional food uses; 6 or more crops submitted in one petition. | 15 | 402,031 |

TABLE 3—REGISTRATION DIVISION—IMPORT AND OTHER TOLERANCES—Continued

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R292 | 37 | Amend an established tolerance (*e.g.,* decrease or increase) and/or harmonize established tolerances with Codex MRLs; domestic or import; applicant-initiated. | 11 | 47,609 |
| R293 | 38 | Establish tolerance(s) for inadvertent residues in one crop; applicant-initiated. | 12 | 56,158 |
| R294 | 39 | Establish tolerances for inadvertent residues; 6 or more crops submitted in one application; applicant-initiated. | 12 | 336,939 |
| R295 | 40 | Establish tolerance(s) for residues in one rotational crop in response to a specific rotational crop application; submission of corresponding label amendments which specify the necessary plant-back restrictions; applicant-initiated [3 4]. | 15 | 69,431 |
| R296 | 41 | Establish tolerances for residues in rotational crops in response to a specific rotational crop petition; 6 or more crops submitted in one application; submission of corresponding label amendments which specify the necessary plant-back restrictions; applicant-initiated [3 4]. | 15 | 416,580 |
| R297 | 42 | Amend 6 or more established tolerances (*e.g.,* decrease or increase) in one petition; domestic or import; applicant-initiated. | 11 | 285,639 |
| R298 | 43 | Amend an established tolerance (*e.g.,* decrease or increase); domestic or import; submission of corresponding amended labels (requiring science review)[3 4]. | 13 | 61,494 |
| R299 | 44 | Amend 6 or more established tolerances (*e.g.,* decrease or increase); domestic or import; submission of corresponding amended labels (requiring science review)[3 4]. | 13 | 299,525 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use.

Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the applicant's written or electronic confirmation of agreement to the Agency.

[4] Amendment applications to add the revised use pattern(s) to registered product labels are covered by the base fee for the category. All items in the covered application must be submitted together in one package. Each application for an additional new product registration and new inert approval(s) that is submitted in the amendment application package is subject to the registration service fee for a new product or a new inert approval. However, if an amendment application only proposes to register the amendment for a new product and there are no amendments in the application, then review of one new product application is covered by the base fee. All such associated applications that are submitted together will be subject to the category decision review time.

TABLE 4—REGISTRATION DIVISION—NEW PRODUCTS

| EPA No. | New CR No. | Action | Decision review time (months)(1) | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R300 | 45 | New product; or similar combination product (already registered) to an identical or substantially similar in composition and use to a registered product; registered source of active ingredient; no data review on acute toxicity, efficacy or CRP—only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end use or manufacturing-use product that requires no data submission nor data matrix [2 3] | 4 | 1,662 |

TABLE 4—REGISTRATION DIVISION—NEW PRODUCTS—Continued

| EPA No. | New CR No. | Action | Decision review time (months)(1) | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R301 | 46 | New product; or similar combination product (already registered) to an identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy (identical data citation and claims to cited product(s)), where applicant does not own all required data and does not have a specific authorization letter from data owner[2 3] | 4 | 1,992 |
| R310 | 47 | New end-use or manufacturing-use product with registered source(s) of active ingredient(s); includes products containing two or more registered active ingredients previously combined in other registered products; excludes products requiring or citing an animal safety study; requires review of data package within RD only; includes data and/or waivers of data for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy—for up to 3 target pests[2 3 4]. | 7 | 7,667 |
| R314 | 48 | New end use product containing up to three registered active ingredients never before registered as this combination in a formulated product; new product label is identical or substantially similar to the labels of currently registered products which separately contain the respective component active ingredients; excludes products requiring or citing an animal safety study; requires review of data package within RD only; includes data and/or waivers of data for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy (4) for up to 3 target pests[2 3]. | 8 | 9,058 |
| R319 | 49 (new) | New end use product containing up to three registered active ingredients never before registered as this combination in a formulated product; new product label is identical or substantially similar to the labels of currently registered products which separately contain the respective component active ingredients; excludes products requiring or citing an animal safety study; requires review of data package within RD only; includes data and/or waivers of data for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy [4]—for 4 to 7 target pests[2 3]. | 10 | 13,258 |
| R318 | 50 (new) | New end-use product containing four or more registered active ingredients never before registered as this combination in a formulated product; new product label is identical or substantially similar to the labels of currently registered products which separately contain the respective component active ingredients; excludes products requiring or citing an animal safety study; requires review of data package within RD only; includes data and/or waivers of data for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy—for up to 3 target pests[2 3 4]. | 9 | 13,915 |
| R321 | 51 (new) | New end use product containing four or more registered active ingredients never before registered as this combination in a formulated product; new product label is identical or substantially similar to the labels of currently registered products which separately contain the respective component active ingredients; excludes products requiring or citing an animal safety study; requires review of data package within RD only; includes data and/or waivers of data for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy [4]—for 4 to 7 target pests[2 3]. | 11 | 18,115 |
| R315 | 52 | New end-use on-animal product, registered source of active ingredient(s) with submission of data and/or waivers for only:<br>• Animal safety and<br>• pest(s) requiring efficacy and/or<br>• product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging[2 3 4]. | 9 | 10,311 |

TABLE 4—REGISTRATION DIVISION—NEW PRODUCTS—Continued

| EPA No. | New CR No. | Action | Decision review time (months)(1) | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R316 | 53 (new) | New end-use or manufacturing product with registered source(s) of active ingredient(s) including products containing two or more registered active ingredients previously combined in other registered products; excludes products requiring or citing an animal safety study; and requires review of data and/or waivers for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy—for greater than 3 and up to 7 target pests[2 3 4]. | 9 | 11,867 |
| R317 | 54 (new) | New end-use or manufacturing product with registered source(s) of active ingredient(s) including products containing two or more registered active ingredients previously combined in other registered products; excludes products requiring or citing an animal safety study; and requires review of data and/or waivers for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging and/or<br>• pest(s) requiring efficacy—for greater than 7 target pests[2 3 4]. | 10 | 16,067 |
| R320 | 55 | New product; new physical form; requires data review in science divisions[2 3] | 12 | 13,888 |
| R331 | 56 | New product; repack of identical registered end-use product as a manufacturing-use product, or identical registered manufacturing-use product as an end-use product; same registered uses only[2 3] | 3 | 2,657 |
| R332 | 57 | New manufacturing-use product; registered active ingredient; unregistered source of active ingredient; submission of completely new generic data package; registered uses only; requires review in RD and science divisions[2 3] | 24 | 297,376 |
| R333 | 58 | New product; MUP or end use product with unregistered source of active ingredient; requires science data review; new physical form; etc. Cite-all or selective data citation where applicant owns all required data[2 3] | 10 | 20,830 |
| R334 | 59 | New product; MUP or end use product with unregistered source of the active ingredient; requires science data review; new physical form; etc. Selective data citation[2 3] | 11 | 24,255 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] An application for a new end-use product using a source of active ingredient that (a) is not yet registered but (b) has an application pending with the Agency for review, will be considered an application for a new product with an unregistered source of active ingredient.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

[4] For the purposes of classifying proposed registration actions into PRIA categories, "pest(s) requiring efficacy" are: Public health pests listed in PR Notice 2002–1, livestock pests (*e.g.,* Horn flies, Stable flies), wood-destroying pests (*e.g.,* termites, carpenter ants, wood-boring beetles) and certain invasive species (*e.g.,* Asian Longhorned beetle, Emerald Ash Borer). This list may be updated/refined as invasive pest needs arise. To determine the number of pests for the PRIA categories, pests have been placed into groups (general; *e.g.,* cockroaches) and pest specific (specifically a test species). If seeking a label claim against a pest group (general), use the group listing below and each group will count as 1. The general pests groups are: Mites, dust mites, chiggers, ticks, hard ticks, soft ticks, cattle ticks, scorpions, spiders, centipedes, lice, fleas, cockroaches, keds, bot flies, screwworms, filth flies, blow flies, house flies, flesh flies, mosquitoes, biting flies, horse flies, stable flies, deer flies, sand flies, biting midges, black flies, true bugs, bed bugs, stinging bees, wasps, yellow jackets, hornets, ants (excluding carpenter ants), fire and harvester ants, wood destroying beetles, carpenter ants, termites, subterranean termites, dry wood termites, arboreal termites, damp wood termites and invasive species. If seeking a claim against a specific pest without a general claim then each specific pest will count as 1.

TABLE 5—REGISTRATION DIVISION—AMENDMENTS

| EPA No. | New CR No. | Action | Decision review time (months) (1) | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R340 | 60 | Amendment requiring data review within RD (*e.g.*, changes to precautionary label statements); includes adding/modifying pest(s) claims for up to 2 target pests; excludes products requiring or citing an animal safety study.[2 3] | 4 | 5,238 |

TABLE 5—REGISTRATION DIVISION—AMENDMENTS—Continued

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| R341 | 61 (new) | Amendment requiring data review within RD (*e.g.*, changes to precautionary label statements), includes adding/modifying pest(s) claims for greater than 2 target pests; excludes products requiring or citing an animal safety study.[2 3] | 6 | 6,288 |
| R345 | 62 | Amending on-animal products previously registered, with the submission of data and/or waivers for only:<br>• Animal safety and<br>• pest(s) requiring efficacy and/or<br>• product chemistry and/or<br>• acute toxicity and/or<br>• child resistant packaging.[2 3 4] | 7 | 9,261 |
| R350 | 63 | Amendment requiring data review in science divisions (*e.g.*, changes to REI, or PPE, or PHI, or use rate, or number of applications; or add aerial application; or modify GW/SW advisory statement) [2 3] | 9 | 13,888 |
| R351 | 64 | Amendment adding a new unregistered source of active ingredient.[2 3] | 8 | 13,888 |
| R352 | 65 | Amendment adding already approved uses; selective method of support; does not apply if the applicant owns all cited data.[2 3] | 8 | 13,888 |
| R371 | 66 | Amendment to Experimental Use Permit; (does not include extending a permit's time period).[2 3] | 6 | 10,595 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] (a) EPA-initiated amendments shall not be charged registration service fees. (b) Registrant-initiated fast-track amendments are to be completed within the timelines specified in FIFRA section 3(c)(3)(B) and are not subject to registration service fees. (c) Registrant-initiated fast-track amendments handled by the Antimicrobials Division are to be completed within the timelines specified in FIFRA section 3(h) and are not subject to registration service fees. (d) Registrant initiated amendments submitted by notification under PR Notices, such as PR Notice 98–10, continue under PR Notice timelines and are not subject to registration service fees. (e) Submissions with data and requiring data review are subject to registration service fees.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

[4] For the purposes of classifying proposed registration actions into PRIA categories, ''pest(s) requiring efficacy'' are: Public health pests listed in PR Notice 2002–1, livestock pests (*e.g.,* Horn flies, Stable flies), wood-destroying pests (*e.g.* termites, carpenter ants, wood-boring beetles) and certain invasive species (*e.g.,* Asian Longhorned beetle, Emerald Ash Borer). This list may be updated/refined as invasive pest needs arise. To determine the number of pests for the PRIA categories, pests have been placed into groups (general; *e.g.,* cockroaches) and pest specific (specifically a test species). If seeking a label claim against a pest group (general), use the group listing below and each group will count as 1. The general pests groups are: mites, dust mites, chiggers, ticks, hard ticks, soft ticks, cattle ticks, scorpions, spiders, centipedes, lice, fleas, cockroaches, keds, bot flies, screwworms, filth flies, blow flies, house flies, flesh flies, mosquitoes, biting flies, horse flies, stable flies, deer flies, sand flies, biting midges, black flies, true bugs, bed bugs, stinging bees, wasps, yellow jackets, hornets, ants (excluding carpenter ants), fire and harvester ants, wood destroying beetles, carpenter ants, termites, subterranean termites, dry wood termites, arboreal termites, damp wood termites and invasive species. If seeking a claim against a specific pest without a general claim then each specific pest will count as 1.

TABLE 6—REGISTRATION DIVISION—OTHER ACTIONS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20—FY'21 fees ($) |
|---|---|---|---|---|
| R124 | 67 | Conditional Ruling on Pre-application Study Waivers; applicant-initiated. | 6 | 2,657 |
| R272 | 68 | Review of Study Protocol applicant- initiated; excludes DART, pre- registration conference, Rapid Response review, DNT protocol review, protocol needing HSRB review. | 3 | 2,657 |
| R275 | 69 | Rebuttal of agency reviewed protocol, applicant initiated. | 3 | 2,657 |
| R370 | 70 | Cancer reassessment; applicant-initiated. | 18 | 208,163 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

*B. Antimicrobials Division (AD)*

The Antimicrobials Division of OPP is responsible for the processing of pesticide applications and associated tolerances for conventional chemicals intended for antimicrobial uses, that is, uses that are defined under FIFRA section 2(mm)(1)(A), including products for use against bacteria, protozoa, non-agricultural fungi, and viruses. AD is also responsible for a selected set of conventional chemicals intended for other uses, including most wood preservatives and antifoulants. Tables 7 through 10 cover AD actions.

TABLE 7—ANTIMICROBIALS DIVISION—NEW ACTIVE INGREDIENTS

| EPA No. | New CR No. | Action | Decision Review Time (Months)[1] | FY'20—FY'21 Fees ($) |
|---|---|---|---|---|
| A380 | 71 | New Active Ingredient; Indirect Food use; establish tolerance or tolerance exemption if required.[2 3] | 24 | 144,734 |
| A390 | 72 | New Active Ingredient; Direct Food use; establish tolerance or tolerance exemption if required.[2 3] | 24 | 241,220 |
| A410 | 73 | New Active Ingredient Non-food use.[2 3] | 21 | 241,262 |
| A431 | 74 | New Active Ingredient, Non-food use; low-risk.[2 3] | 12 | 84,237 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use. Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 8—ANTIMICROBIALS DIVISION—NEW USES

| EPA No. | New CR No. | Action | Decision Review Time (Months)[1] | FY'20—FY'21 Fees ($) |
|---|---|---|---|---|
| A440 | 75 | New Use, Indirect Food Use, establish tolerance or tolerance exemption.[2 3 4] | 21 | 33,506 |
| A441 | 76 (new) | Additional Indirect food uses; establish tolerances or tolerance exemptions if required; 6 or more submitted in one application.[3 4 5] | 21 | 120,614 |
| A450 | 77 | New use, Direct food use, establish tolerance or tolerance exemption.[2 3 4] | 21 | 100,511 |
| A451 | 78 (new) | Additional Direct food uses; establish tolerances or tolerance exemptions if required; 6 or more submitted in one application.[3 4 5] | 21 | 191,452 |
| A500 | 79 | New use, non-food[4 5] | 12 | 33,506 |
| A501 | 80 | New use, non-food; 6 or more submitted in one application.[4 5] | 15 | 80,413 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use. Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] If EPA data rules are amended to newly require clearance under section 408 of the FFDCA for an ingredient of an antimicrobial product where such ingredient was not previously subject to such a clearance, then review of the data for such clearance of such product is not subject to a registration service fee for the tolerance action for two years from the effective date of the rule.

[4] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

[5] Amendment applications to add the new use(s) to registered product labels are covered by the base fee for the new use(s). All items in the covered application must be submitted together in one package. Each application for an additional new product registration and new inert approval(s) that is submitted in the new use application package is subject to the registration service fee for a new product or a new inert approval. However, if a new use application only proposes to register the new use for a new product and there are no amendments in the application, then review of one new product application is covered by the new use fee. All such associated applications that are submitted together will be subject to the new use decision review time. Any application for a new product or an amendment to the proposed labeling (a) submitted subsequent to submission of the new use application and (b) prior to conclusion of its decision review time and (c) containing the same new uses, will be deemed a separate new-use application, subject to a separate registration service fee and new decision review time for a new use. If the new-use application includes non-food (indoor and/or outdoor), and food (outdoor and/or indoor) uses, the appropriate fee is due for each type of new use and the longest decision review time applies to all of the new uses requested in the application. Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screen, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new use application.

TABLE 9—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS

| EPA No. | New CR No. | Action | Decision review time (months)[1] | FY'20—FY'21 fees ($) |
|---|---|---|---|---|
| A530 | 81 | New product, identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite all data citation or selective data citation where applicant owns all required data; or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing use product that requires no data submission nor data matrix.[2 3] | 4 | 1,342 |
| A531 | 82 | New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient: selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner.[2 3] | 4 | 1,916 |
| A532 | 83 | New product; identical or substantially similar in composition and use to a registered product; registered active ingredient; unregistered source of active ingredient; cite-all data citation except for product chemistry; product chemistry data submitted.[2 3] | 5 | 5,363 |
| A540 | 84 | New end use product; FIFRA § 2(mm) uses only; up to 25 public health organisms.[2 3 5 6] | 5 | 5,363 |
| A541 | 85 (new) | New end use product; FIFRA § 2(mm) uses only; 26–50 public health organisms.[2 3 5 6] | 7 | 8,925 |
| A542 | 86 (new) | New end use product; FIFRA § 2(mm) uses only; ≥ 51 public health organisms.[2 3 5] | 10 | 15,750 |
| A550 | 87 | New end-use product; uses other than FIFRA § 2(mm); non-FQPA product.[2 3 5] | 9 | 13,888 |
| A560 | 88 | New manufacturing use product; registered active ingredient; selective data citation.[2 3] | 6 | 13,226 |
| A565 | 89 (new) | New manufacturing-use product; registered active ingredient; unregistered source of active ingredient; submission of new generic data package; registered uses only; requires science review.[2 3] | 12 | 19,146 |
| A570 | 90 | Label amendment requiring data review; up to 25 public health organisms.[3 4 5 6] | 4 | 4,023 |
| A573 | 91 (new) | Label amendment requiring data review; 26–50 public health organisms.[2 3 5 7] | 6 | 6,668 |
| A574 | 92 (new) | Label amendment requiring data review; ≥ 51 public health organisms.[2 3 5 7] | 9 | 11,550 |
| A572 | 93 | New Product or amendment requiring data review for risk assessment by Science Branch (e.g., changes to REI, or PPE, or use rate).[2 3 4] | 9 | 13,888 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] An application for a new end-use product using a source of active ingredient that (a) is not yet registered but (b) has an application pending with the Agency for review, will be considered an application for a new product with an unregistered source of active ingredient.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

[4] (a) EPA-initiated amendments shall not be charged registration service fees. (b) Registrant-initiated fast-track amendments are to be completed within the timelines specified in FIFRA section 3(c)(3)(B) and are not subject to registration service fees. (c) Registrant-initiated fast-track amendments handled by the Antimicrobials Division are to be completed within the timelines specified in FIFRA section 3(h) and are not subject to registration service fees. (d) Registrant initiated amendments submitted by notification under PR Notices, such as PR Notice 98–10, continue under PR Notice timelines and are not subject to registration service fees. (e) Submissions with data and requiring data review are subject to registration service fees.

[5] The applicant must identify the substantially similar product if opting to use cite-all or the selective method to support acute toxicity data requirements.

[6] Once a submission for a new product with public health organisms has been submitted and classified in either A540 or A541, additional organisms submitted for the same product before expiration of the first submission's original decision review time period will result in reclassification of both the original and subsequent submission into the appropriate new category based on the sum of the number or organisms in both submissions. A reclassification would result in a new PRIA start date and require additional fees to meet the fee of the new category.

[7] Once a submission for a label amendment with public health organisms has been submitted and classified in either A570 or A573, additional organisms submitted for the same product before expiration of the first submission's original decision review time period will result in reclassification of both the original and subsequent submission into the appropriate new category based on the sum of the number or organisms in both submissions. A reclassification would result in a new PRIA start date and require additional fees to meet the fee of the new category.

TABLE 10—ANTIMICROBIALS DIVISION—EXPERIMENTAL USE PERMITS AND OTHER ACTIONS

| EPA No. | New CR No. | Action | Decision review time (months)[1] | FY'20—FY'21 fees ($) |
|---|---|---|---|---|
| A520 | 94 | Experimental Use Permit application, non-food use.[2] | 9 | 6,703 |
| A521 | 95 | Review of public health efficacy study protocol within AD, per AD Internal Guidance for the Efficacy Protocol Review Process; Code will also include review of public health efficacy study protocol and data review for devices making pesticidal claims; applicant-initiated; Tier 1 | 4 | 4,963 |
| A522 | 96 | Review of public health efficacy study protocol outside AD by members of AD Efficacy Protocol Review Expert Panel; Code will also include review of public health efficacy study protocol and data review for devices making pesticidal claims; applicant-initiated; Tier 2 | 12 | 12,764 |
| A537 | 97 (new) | New Active Ingredient/New Use, Experimental Use Permit application; Direct food use; Establish tolerance or tolerance exemption if required. Credit 45% of fee toward new active ingredient/new use application that follows. | 18 | 160,814 |
| A538 | 98 (new) | New Active Ingredient/New Use, Experimental Use Permit application; Indirect food use; Establish tolerance or tolerance exemption if required Credit 45% of fee toward new active ingredient/new use application that follows. | 18 | 100,511 |
| A539 | 99 (new) | New Active Ingredient/New Use, Experimental Use Permit application; Nonfood use. Credit 45% of fee toward new active ingredient/new use application that follows. | 15 | 96,772 |
| A529 | 100 | Amendment to Experimental Use Permit; requires data review or risk assessment.[2] | 9 | 12,001 |
| A523 | 101 | Review of protocol other than a public health efficacy study (i.e., Toxicology or Exposure Protocols) | 9 | 12,764 |
| A571 | 102 | Science reassessment: Cancer risk, refined ecological risk, and/or endangered species; applicant-initiated. | 18 | 100,511 |
| A533 | 103 (new) | Exemption from the requirement of an Experimental Use Permit.[2] | 4 | 2,607 |
| A534 | 104 (new) | Rebuttal of agency reviewed protocol, applicant initiated | 4 | 4,963 |
| A535 | 105 (new) | Conditional Ruling on Pre-application Study Waiver or Data Bridging Argument; applicant-initiated | 6 | 2,530 |
| A536 | 106 (new) | Conditional Ruling on Pre-application Direct Food, Indirect Food, Nonfood use determination; applicant-initiated | 4 | 2,607 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

### *C. Biopesticides and Pollution Prevention Division (BPPD)*

The Biopesticides and Pollution Prevention Division of OPP is responsible for the processing of pesticide applications for biochemical pesticides, microbial pesticides, and plant-incorporated protectants (PIPs).

The fee tables for BPPD actions are presented by type of pesticide rather than by type of action: Microbial and biochemical pesticides, straight chain lepidopteran pheromones (SCLPs), and PIPs. Within each table, the types of application are the same as those in other divisions. Tables 11 through 17 cover BPPD actions.

TABLE 11—BIOPESTICIDES DIVISION—NEW ACTIVE INGREDIENTS

| EPA No. | New CR No. | Action | Decision review time (months).[1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B580 | 107 | New active ingredient; food use; petition to establish a tolerance.[2 3] | 20 | 53,606 |
| B590 | 108 | New active ingredient; food use; petition to establish a tolerance exemption.[2 3] | 18 | 33,506 |
| B600 | 109 | New active ingredient; non-food use.[2 3] | 13 | 20,104 |
| B610 | 110 | New active ingredient; Experimental Use Permit application; petition to establish a temporary tolerance or temporary tolerance exemption.[3] | 10 | 13,403 |
| B611 | 111 | New active ingredient; Experimental Use Permit application; petition to establish permanent tolerance exemption.[3] | 12 | 13,403 |
| B612 | 112 | New active ingredient; no change to a permanent tolerance exemption.[2 3] | 10 | 18,428 |
| B613 | 113 | New active ingredient; petition to convert a temporary tolerance or a temporary tolerance exemption to a permanent tolerance or tolerance exemption.[2 3] | 11 | 18,428 |
| B620 | 114 | New active ingredient; Experimental Use Permit application; non-food use including crop destruct.[3] | 7 | 6,703 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use.

Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 12—BIOPESTICIDES DIVISION—NEW USES

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B630 | 115 | First food use; petition to establish a tolerance exemption.[2 4] | 13 | 13,403 |
| B631 | 116 | New food use; petition to amend an established tolerance.[3 4] | 12 | 13,403 |
| B640 | 117 | First food use; petition to establish a tolerance.[2 4] | 19 | 20,104 |
| B643 | 118 | New Food use; petition to amend tolerance exemption.[3 4] | 10 | 13,403 |
| B642 | 119 | First food use; indoor; food/food handling.[2 4] | 12 | 33,506 |
| B644 | 120 | New use, no change to an established tolerance or tolerance exemption.[3 4] | 8 | 13,403 |
| B650 | 121 | New use; non-food.[3 4] | 7 | 6,703 |
| B645 | 122 (new) | New food use; Experimental Use Permit application; petition to amend or add a tolerance exemption.[4] | 12 | 13,403 |
| B646 | 123 (new) | New use; non-food use including crop destruct; Experimental Use Permit application.[4] | 7 | 6,703 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use. Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] Amendment applications to add the new use(s) to registered product labels are covered by the base fee for the new use(s). All items in the covered application must be submitted together in one package. Each application for an additional new product registration and new inert approval(s) that is submitted in the new use application package is subject to the registration service fee for a new product or a new inert approval. However, if a new use application only proposes to register the new use for a new product and there are no amendments in the application, then review of one new product application is covered by the new use fee. All such associated applications that are submitted together will be subject to the new use decision review time. Any application for a new product or an amendment to the proposed labeling (a) submitted subsequent to submission of the new use application and (b) prior to conclusion of its decision review time and (c) containing the same new uses, will be deemed a separate new-use application, subject to a separate registration service fee and new decision review time for a new use. If the new-use application includes non-food (indoor and/or outdoor), and food (outdoor and/or indoor) uses, the appropriate fee is due for each type of new use and the longest decision review time applies to all of the new uses requested in the application. Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screen, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new use application.

[4] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 13—BIOPESTICIDES DIVISION—NEW PRODUCTS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B652 | 124 | New product; registered source of active ingredient; requires petition to amend established tolerance or tolerance exemption; requires (1) Submission of product specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of scientifically-sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically-sound rationale explaining why the data requirement does not apply.[2 3] | 13 | 13,403 |
| B660 | 125 | New product; registered source of active ingredient(s); identical or substantially similar in composition and use to a registered product; no change in an established tolerance or tolerance exemption. No data review, or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data or authorization from data owner is demonstrated. Category includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission or data matrix. For microbial pesticides, the active ingredient(s) must not be re-isolated.[2 3] | 4 | 1,342 |
| B670 | 126 | New product; registered source of active ingredient(s); no change in an established tolerance or tolerance exemption; requires: (1) Submission of product specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically-sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically-sound rationale explaining why the data requirement does not apply.[2 3] | 7 | 5,363 |
| B671 | 127 | New product; unregistered source of active ingredient(s); requires a petition to amend an established tolerance or tolerance exemption; requires: (1) Submission of product specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically-sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically-sound rationale explaining why the data requirement does not apply.[2 3] | 17 | 13,403 |
| B672 | 128 | New product; unregistered source of active ingredient(s); non-food use or food use with a tolerance or tolerance exemption previously established for the active ingredient(s); requires: (1) Submission of product specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically-sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically-sound rationale explaining why the data requirement does not apply.[2 3] | 13 | 9,574 |

TABLE 13—BIOPESTICIDES DIVISION—NEW PRODUCTS—Continued

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B673 | 129 | New product MUP/EP; unregistered source of active ingredient(s); citation of Technical Grade Active Ingredient (TGAI) data previously reviewed and accepted by the Agency. Requires an Agency determination that the cited data supports the new product.[2 3] | 10 | 5,363 |
| B674 | 130 | New product MUP; Repack of identical registered end-use product as a manufacturing-use product; same registered uses only.[2 3] | 4 | 1,342 |
| B675 | 131 | New Product MUP; registered source of active ingredient; submission of completely new generic data package; registered uses only.[2 3] | 10 | 9,574 |
| B676 | 132 | New product; more than one active ingredient where one active ingredient is an unregistered source; product chemistry data must be submitted; requires: (1) Submission of product specific data, and (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically-sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically-sound rationale explaining why the data requirement does not apply.[2 3] | 13 | 9,574 |
| B677 | 133 | New end-use non-food animal product with submission of two or more target animal safety studies; includes data and/or waivers of data for only:<br>• Product chemistry and/or<br>• acute toxicity and/or<br>• public health pest efficacy and/or<br>• animal safety studies and/or<br>• child resistant packaging.[2 3] | 10 | 9,261 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] An application for a new end-use product using a source of active ingredient that (a) is not yet registered but (b) has an application pending with the Agency for review, will be considered an application for a new product with an unregistered source of active ingredient.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 14—BIOPESTICIDES DIVISION—AMENDMENTS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B621 | 134 | Amendment; Experimental Use Permit; no change to an established temporary tolerance or tolerance exemption.[3] | 7 | 5,363 |
| B622 | 135 | Amendment; Experimental Use Permit; petition to amend an established or temporary tolerance or tolerance exemption.[3] | 11 | 13,403 |
| B641 | 136 | Amendment of an established tolerance or tolerance exemption. | 13 | 13,403 |
| B680 | 137 | Amendment; registered sources of active ingredient(s); no new use(s); no changes to an established tolerance or tolerance exemption. Requires data submission.[2 3] | 5 | 5,363 |
| B681 | 138 | Amendment; unregistered source of active ingredient(s). Requires data submission.[2 3] | 7 | 6,383 |
| B683 | 139 | Label amendment; requires review/update of previous risk assessment(s) without data submission (*e.g.,* labeling changes to REI, PPE, PHI).[2 3] | 6 | 5,363 |
| B684 | 140 | Amending non-food animal product that includes submission of target animal safety data; previously registered.[2 3] | 8 | 9,261 |
| B685 | 141 (new) | Amendment; add a new biochemical unregistered source of active ingredient or a new microbial production site. Requires submission of analysis of samples data and source/production site-specific manufacturing process description.[3] | 5 | 5,363 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] (a) EPA-initiated amendments shall not be charged registration service fees. (b) Registrant-initiated fast-track amendments are to be completed within the timelines specified in FIFRA section 3(c)(3)(B) and are not subject to registration service fees. (c) Registrant-initiated fast-track amendments handled by the Antimicrobials Division are to be completed within the timelines specified in FIFRA section 3(h) and are not subject to registration service fees. (d) Registrant initiated amendments submitted by notification under PR Notices, such as PR Notice 98–10, continue under PR Notice timelines and are not subject to registration service fees. (e) Submissions with data and requiring data review are subject to registration service fees.

[3] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 15—BIOPESTICIDES DIVISION—SCLP

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B690 | 142 | New active ingredient; food or non-food use.[2 6] | 7 | 2,682 |
| B700 | 143 | Experimental Use Permit application; new active ingredient or new use.[6] | 7 | 1,342 |
| B701 | 144 | Extend or amend Experimental Use Permit.[6] | 4 | 1,342 |
| B710 | 145 | New product; registered source of active ingredient(s); identical or substantially similar in composition and use to a registered product; no change in an established tolerance or tolerance exemption. No data review, or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data or authorization from data owner is demonstrated. Category includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission or data matrix.[3 6] | 4 | 1,342 |
| B720 | 146 | New product; registered source of active ingredient(s); requires: (1) Submission of product specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically-sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically-sound rationale explaining why the data requirement does not apply.[3 6] | 5 | 1,342 |
| B721 | 147 | New product; unregistered source of active ingredient.[3 6] | 7 | 2,810 |
| B722 | 148 | New use and/or amendment; petition to establish a tolerance or tolerance exemption.[4 5 6] | 7 | 2,601 |
| B730 | 149 | Label amendment requiring data submission.[4 6] | 5 | 1,342 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] All requests for new uses (food and/or nonfood) contained in any application for a new active ingredient or a first food use are covered by the base fee for that new active ingredient or first food use application and retain the same decision time review period as the new active ingredient or first food use application. The application must be received by the Agency in one package. The base fee for the category covers a maximum of five new products. Each application for an additional new product registration and new inert approval that is submitted in the new active ingredient application package or first food use application package is subject to the registration service fee for a new product or a new inert approval. All such associated applications that are submitted together will be subject to the new active ingredient or first food use decision review time. In the case of a new active ingredient application, until that new active ingredient is approved, any subsequent application for another new product containing the same active ingredient or an amendment to the proposed labeling will be deemed a new active ingredient application, subject to the registration service fee and decision review time for a new active ingredient. In the case of a first food use application, until that first food use is approved, any subsequent application for an additional new food use or uses will be subject to the registration service fee and decision review time for a first food use.

Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screening, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new active ingredient or first food use application.

[3] An application for a new end-use product using a source of active ingredient that (a) is not yet registered but (b) has an application pending with the Agency for review, will be considered an application for a new product with an unregistered source of active ingredient.

[4] (a) EPA-initiated amendments shall not be charged registration service fees. (b) Registrant-initiated fast-track amendments are to be completed within the timelines specified in FIFRA section 3(c)(3)(B) and are not subject to registration service fees. (c) Registrant-initiated fast-track amendments handled by the Antimicrobials Division are to be completed within the timelines specified in FIFRA section 3(h) and are not subject to registration service fees. (d) Registrant initiated amendments submitted by notification under PR Notices, such as PR Notice 98–10, continue under PR Notice timelines and are not subject to registration service fees. (e) Submissions with data and requiring data review are subject to registration service fees.

[5] Amendment applications to add the new use(s) to registered product labels are covered by the base fee for the new use(s). All items in the covered application must be submitted together in one package. Each application for an additional new product registration and new inert approval(s) that is submitted in the new use application package is subject to the registration service fee for a new product or a new inert approval. However, if a new use application only proposes to register the new use for a new product and there are no amendments in the application, then review of one new product application is covered by the new use fee. All such associated applications that are submitted together will be subject to the new use decision review time. Any application for a new product or an amendment to the proposed labeling (a) submitted subsequent to submission of the new use application and (b) prior to conclusion of its decision review time and (c) containing the same new uses, will be deemed a separate new-use application, subject to a separate registration service fee and new decision review time for a new use. If the new-use application includes non-food (indoor and/or outdoor), and food (outdoor and/or indoor) uses, the appropriate fee is due for each type of new use and the longest decision review time applies to all of the new uses requested in the application. Any information that (a) was neither requested nor required by the Agency, and (b) is submitted by the applicant at the applicant's initiative to support the application after completion of the technical deficiency screen, and (c) is not itself a covered registration application, must be assessed 25% of the full registration service fee for the new use application.

[6] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 16—BIOPESTICIDES DIVISION—OTHER ACTIONS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B614 | 150 | Pre-application; Conditional Ruling on rationales for addressing a data requirement in lieu of data; applicant-initiated; applies to one (1) rationale at a time. | 3 | 2,657 |
| B615 | 151 | Rebuttal of agency reviewed protocol, applicant initiated | 3 | 2,657 |
| B682 | 152 | Protocol review; applicant initiated; excludes time for HSRB review | 3 | 2,554 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or federal holiday, will be extended to end on the next business day.

TABLE 17—BIOPESTICIDES DIVISION—PIP

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B740 | 153 | Experimental Use Permit application; no petition for tolerance/tolerance exemption. Includes:<br>1. Non-food/feed use(s) for a new [2] or registered [3] PIP [12];<br>2. food/feed use(s) for a new or registered PIP with crop destruct [12];<br>3. food/feed use(s) for a new or registered PIP in which an established tolerance/tolerance exemption exists for the intended use(s).[4] [12] | 6 | 100,511 |
| B741 | 154 (new) | Experimental Use Permit application; no petition for tolerance/tolerance exemption. Includes:<br>1. Non-food/feed use(s) for a new [2] or registered [3] PIP;<br>2. food/feed use(s) for a new or registered PIP with crop destruct;<br>3. food/feed use(s) for a new or registered PIP in which an established tolerance/tolerance exemption exists for the intended use(s);<br>SAP Review.[12] | 12 | 167,515 |
| B750 | 155 | Experimental Use Permit application; with a petition to establish a temporary or permanent tolerance/tolerance exemption for the active ingredient. Includes new food/feed use for a registered [3] PIP.[4] [12] | 9 | 134,012 |
| B770 | 156 | Experimental Use Permit application; new [2] PIP; with petition to establish a temporary tolerance/tolerance exemption for the active ingredient; credit 75% of B771 fee toward registration application for a new active ingredient that follows; SAP review.[5] [12] | 15 | 201,017 |
| B771 | 157 | Experimental Use Permit application; new [2] PIP; with petition to establish a temporary tolerance/tolerance exemption for the active ingredient; credit 75% of B771 fee toward registration application for a new active ingredient that follows.[12] | 10 | 134,012 |
| B772 | 158 | Application to amend or extend an Experimental Use Permit; no petition since the established tolerance/tolerance exemption for the active ingredient is unaffected.[12] | 3 | 13,403 |
| B773 | 159 | Application to amend or extend an Experimental Use Permit; with petition to extend a temporary tolerance/tolerance exemption for the active ingredient.[12] | 5 | 33,506 |
| B780 | 160 | Registration application; new [2] PIP; non-food/feed.[12] | 12 | 167,514 |
| B790 | 161 | Registration application; new [2] PIP; non-food/feed; SAP review.[5] [12] | 18 | 234,519 |

TABLE 17—BIOPESTICIDES DIVISION—PIP—Continued

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B800 | 162 | Registration application; new [2] PIP; with petition to establish permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption.[12] | 13 | 180,915 |
| B810 | 163 | Registration application; new [2] PIP; with petition to establish permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption. SAP review.[5 12] | 19 | 247,920 |
| B820 | 164 | Registration application; new [2] PIP; with petition to establish or amend a permanent tolerance/tolerance exemption of an active ingredient.[12] | 15 | 214,419 |
| B840 | 165 | Registration application; new [2] PIP; with petition to establish or amend a permanent tolerance/tolerance exemption of an active ingredient. SAP review.[5 12] | 21 | 281,424 |
| B851 | 166 | Registration application; new event of a previously registered PIP active ingredient(s); no petition since permanent tolerance/tolerance exemption is already established for the active ingredient(s).[12] | 9 | 134,012 |
| B870 | 167 | Registration application; registered [3] PIP; new product; new use; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s).[4 12] | 9 | 40,205 |
| B880 | 168 | Registration application; registered [3] PIP; new product or new terms of registration; additional data submitted; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s).[6 7 12] | 9 | 33,506 |
| B881 | 169 | Registration application; registered [3] PIP; new product or new terms of registration; additional data submitted; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s). SAP review.[5 6 7 12] | 15 | 100,511 |
| B882 | 170 (new) | Registration application; new [2] PIP, seed increase with negotiated acreage cap and time-limited registration; with petition to establish a permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption; SAP Review.[8 12] | 15 | 201,017 |
| B883 | 171 | Registration application; new [2] PIP, seed increase with negotiated acreage cap and time-limited registration; with petition to establish a permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption.[8 12] | 9 | 134,012 |
| B884 | 172 | Registration application; new [2] PIP, seed increase with negotiated acreage cap and time-limited registration; with petition to establish a permanent tolerance/tolerance exemption for the active ingredient.[8 12] | 12 | 167,514 |
| B885 | 173 | Registration application; registered [2] PIP, seed increase; breeding stack of previously approved PIPs, same crop; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s).[9 12] | 6 | 33,506 |
| B886 | 174 (new) | Registration application; new [2] PIP seed increase with negotiated acreage cap and time-limited registration; with petition to establish a permanent tolerance/tolerance exemption for the active ingredient. SAP Review.[8 12] | 18 | 234,519 |
| B890 | 175 | Application to amend a seed increase registration; converts registration to commercial registration; no petition since permanent tolerance/tolerance exemption is already established for the active ingredient(s).[12] | 9 | 67,007 |
| B891 | 176 | Application to amend a seed increase registration; converts registration to a commercial registration; no petition since a permanent tolerance/tolerance exemption already established for the active ingredient(s); SAP review.[5 12] | 15 | 134,012 |
| B900 | 177 | Application to amend a registration, including actions such as extending an expiration date, modifying an IRM plan, or adding an insect to be controlled.[10 11 12] | 6 | 13,403 |
| B901 | 178 | Application to amend a registration, including actions such as extending an expiration date, modifying an IRM plan, or adding an insect to be controlled. SAP review.[10 11 12] | 12 | 80,407 |
| B902 | 179 | PIP Protocol review | 3 | 6,703 |
| B903 | 180 | Inert ingredient tolerance exemption; *e.g.,* a marker such as NPT II; reviewed in BPPD. | 6 | 67,007 |
| B904 | 181 | Import tolerance or tolerance exemption; processed commodities/food only (inert or active ingredient). | 9 | 134,012 |
| B905 | 182 (new) | SAP Review | 6 | 67,007 |
| B906 | 183 (new) | Petition to establish a temporary tolerance/tolerance exemption for one or more active ingredients. | 3 | 33,503 |
| B907 | 184 (new) | Petition to establish a temporary tolerance/tolerance exemption for one or more active ingredients based on an existing temporary tolerance/tolerance exemption. | 3 | 13,403 |

TABLE 17—BIOPESTICIDES DIVISION—PIP—Continued

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| B908 | 185 (new) | Petition to establish a temporary tolerance/tolerance exemption for one or more active ingredients or inert ingredients | 3 | 46,905 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.
[2] New PIP = a PIP with an active ingredient that has not been registered.
[3] Registered PIP = a PIP with an active ingredient that is currently registered.
[4] Transfer registered PIP through conventional breeding for new food/feed use, such as from field corn to sweet corn.
[5] The scientific data involved in this category are complex. EPA often seeks technical advice from the Scientific Advisory Panel (SAP) on risks that pesticides pose to wildlife, farm workers, pesticide applicators, non-target species, as well as insect resistance, and novel scientific issues surrounding new technologies. The scientists of the SAP neither make nor recommend policy decisions. They provide advice on the science used to make these decisions. Their advice is invaluable to the EPA as it strives to protect humans and the environment from risks posed by pesticides. Due to the time it takes to schedule and prepare for meetings with the SAP, additional time and costs are needed.
[6] Registered PIPs stacked through conventional breeding.
[7] Deployment of a registered PIP with a different IRM plan (*e.g.,* seed blend).
[8] The negotiated acreage cap will depend upon EPA's determination of the potential environmental exposure, risk(s) to non-target organisms, and the risk of targeted pest developing resistance to the pesticidal substance. The uncertainty of these risks may reduce the allowable acreage, based upon the quantity and type of non-target organism data submitted and the lack of insect resistance management data, which is usually not required for seed-increase registrations. Registrants are encouraged to consult with EPA prior to submission of a registration application in this category.
[9] Application can be submitted prior to or concurrently with an application for commercial registration.
[10] For example, IRM plan modifications that are applicant-initiated.
[11] EPA-initiated amendments shall not be charged fees.
[12] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the registrant's written or electronic confirmation of agreement to the Agency.

TABLE 18—INERT INGREDIENTS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| I001 | 186 | Approval of new food use inert ingredient [2] [3] | 13 | 28,350 |
| I002 | 187 | Amend currently approved inert ingredient tolerance or exemption from tolerance; new data.[2] | 11 | 7,875 |
| I003 | 188 | Amend currently approved inert ingredient tolerance or exemption from tolerance; no new data.[2] | 9 | 3,474 |
| I004 | 189 | Approval of new non-food use inert ingredient.[2] | 6 | 11,577 |
| I005 | 190 | Amend currently approved non-food use inert ingredient with new use pattern; new data.[2] | 6 | 5,789 |
| I006 | 191 | Amend currently approved non-food use inert ingredient with new use pattern; no new data.[2] | 3 | 3,474 |
| I007 | 192 | Approval of substantially similar non-food use inert ingredients when original inert is compositionally similar with similar use pattern.[2] | 4 | 1,737 |
| I008 | 193 | Approval of new or amended polymer inert ingredient, food use.[2] | 5 | 3,937 |
| I009 | 194 | Approval of new or amended polymer inert ingredient, non-food use.[2] | 4 | 3,242 |
| I010 | 195 | Petition to amend a single tolerance exemption descriptor, or single non-food use descriptor, to add ≤10 CASRNs; no new data.[2] | 6 | 1,737 |
| I011 | 196 (new) | Approval of new food use safener with tolerance or exemption from tolerance.[2] [8] | 24 | 627,568 |
| I012 | 197 (new) | Approval of new non-food use safener.[2] [8] | 21 | 436,004 |
| I013 | 198 (new) | Approval of additional food use for previously approved safener with tolerance or exemption from tolerance.[2] | 15 | 66,124 |
| I014 | 199 (new) | Approval of additional non-food use for previously approved safener.[2] | 15 | 26,427 |
| I015 | 200 (new) | Approval of new generic data for previously approved food use safener.[2] | 24 | 283,215 |
| I016 | 201 (new) | Approval of amendment(s) to tolerance and label for previously approved safener.[2] | 13 | 58,565 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.
[2] If another covered application is submitted that depends upon an application to approve an inert ingredient, each application will be subject to its respective registration service fee. The decision review time line for both submissions will be the longest of the associated applications. If the application covers multiple ingredients grouped by EPA into one chemical class, a single registration service fee will be assessed for approval of those ingredients.
[3] If EPA data rules are amended to newly require clearance under section 408 of the FFDCA for an ingredient of an antimicrobial product where such ingredient was not previously subject to such a clearance, then review of the data for such clearance of such product is not subject to a registration service fee for the tolerance action for two years from the effective date of the rule.

[4] Any other covered application that is associated with and dependent on the HSRB review will be subject to its separate registration service fee. The decision review times for the associated actions run concurrently but will end at the date of the latest review time.

[5] Any other covered application that is associated with and dependent on the SAP review will be subject to its separate registration service fee. The decision review time for the associated action will be extended by the decision review time for the SAP review.

[6] An application for a new end-use product using a source of active ingredient that (a) is not yet registered but (b) has an application pending with the Agency for review, will be considered an application for a new product with an unregistered source of active ingredient.

[7] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the applicant's written or electronic confirmation of agreement to the Agency.

[8] If a new safener is submitted in the same package as a new active ingredient, and that new active ingredient is determined to be reduced risk, then the safener would get the same reduced timeframe as the new active ingredient.

TABLE 19—EXTERNAL REVIEW AND MISCELLANEOUS ACTIONS

| EPA No. | New CR No. | Action | Decision review time (months) [1] | FY'20–FY'21 fees ($) |
|---|---|---|---|---|
| M001 | 202 | Study protocol requiring Human Studies Review Board review as defined in 40 CFR Part 26 in support of an active ingredient.[4] | 9 | 8,335 |
| M002 | 203 | Completed study requiring Human Studies Review Board review as defined in 40 CFR Part 26 in support of an active ingredient.[4] | 9 | 8,335 |
| M003 | 204 | External technical peer review of new active ingredient, product, or amendment (*e.g.,* consultation with FIFRA Scientific Advisory Panel) for an action with a decision timeframe of less than 12 months. Applicant initiated request based on a requirement of the Administrator, as defined by FIFRA § 25(d), in support of a novel active ingredient, or unique use pattern or application technology. Excludes PIP active ingredients.[5] | 12 | 67,143 |
| M004 | 205 | External technical peer review of new active ingredient, product, or amendment (*e.g.,* consultation with FIFRA Scientific Advisory Panel) for an action with a decision timeframe of greater than 12 months. Applicant initiated request based on a requirement of the Administrator, as defined by FIFRA § 25(d), in support of a novel active ingredient, or unique use pattern or application technology. Excludes PIP active ingredients.[5] | 18 | 67,143 |
| M005 | 206 | New Product: Combination, Contains a combination of active ingredients from a registered and/or unregistered source; conventional, antimicrobial and/or biopesticide. Requires coordination with other regulatory divisions to conduct review of data, label and/or verify the validity of existing data as cited. Only existing uses for each active ingredient in the combination product.[6] [7] | 9 | 23,153 |
| M006 | 207 | Request for up to 5 letters of certification (Gold Seal) for one actively registered product (excludes distributor products).[8] | 1 | 291 |
| M007 | 208 | Request to extend Exclusive Use of data as provided by FIFRA section 3(c)(1)(F)(ii). | 12 | 5,789 |
| M008 | 209 | Request to grant Exclusive Use of data as provided by FIFRA Section 3(c)(1)(F)(vi) for a minor use, when a FIFRA Section 2(ll)(2) determination is required. | 15 | 1,737 |
| M009 | 210 (new) | Non-FIFRA Regulated Determination: Applicant initiated, per product. | 4 | 2,482 |
| M010 | 211 (new) | Conditional ruling on pre-application, product substantial similarity. | 4 | 2,482 |
| M011 | 212 (new) | Label amendment to add the DfE logo; requires data review; no other label changes.[9] | 4 | 3,831 |

[1] A decision review time that would otherwise end on a Saturday, Sunday, or Federal holiday, will be extended to end on the next business day.

[2] If another covered application is submitted that depends upon an application to approve an inert ingredient, each application will be subject to its respective registration service fee. The decision review time line for both submissions will be the longest of the associated applications. If the application covers multiple ingredients grouped by EPA into one chemical class, a single registration service fee will be assessed for approval of those ingredients.

[3] If EPA data rules are amended to newly require clearance under section 408 of the FFDCA for an ingredient of an antimicrobial product where such ingredient was not previously subject to such a clearance, then review of the data for such clearance of such product is not subject to a registration service fee for the tolerance action for two years from the effective date of the rule.

[4] Any other covered application that is associated with and dependent on the HSRB review will be subject to its separate registration service fee. The decision review times for the associated actions run concurrently but will end at the date of the latest review time.

[5] Any other covered application that is associated with and dependent on the SAP review will be subject to its separate registration service fee. The decision review time for the associated action will be extended by the decision review time for the SAP review.

[6] An application for a new end-use product using a source of active ingredient that (a) is not yet registered but (b) has an application pending with the Agency for review, will be considered an application for a new product with an unregistered source of active ingredient.

[7] Where the action involves approval of a new or amended label, on or before the end date of the decision review time, the Agency shall provide to the applicant a draft accepted label, including any changes made by the Agency that differ from the applicant-submitted label and relevant supporting data reviewed by the Agency. The applicant will notify the Agency that the applicant either (a) agrees to all of the terms associated with the draft accepted label as amended by the Agency and requests that it be issued as the accepted final Agency-stamped label; or (b) does not agree to one or more of the terms of the draft accepted label as amended by the Agency and requests additional time to resolve the difference(s); or (c) withdraws the application without prejudice for subsequent resubmission, but forfeits the associated registration service fee. For cases described in (b), the applicant shall have up to 30 calendar days to reach agreement with the Agency on the final terms of the Agency-accepted label. If the applicant agrees to all of the terms of the accepted label as in (a), including upon resolution of differences in (b), the Agency shall provide an accepted final Agency-stamped label to the registrant within 2 business days following the applicant's written or electronic confirmation of agreement to the Agency.

[8] Due to low fee and short time frame this category is not eligible for small business waivers. Gold seal applies to one registered product

[9] This category includes amendments the sole purpose of which are to add DfE (or equivalent terms that do not use ''safe'' or derivatives of ''safe'') logos to a label. DfE is a voluntary program. A label bearing a DfE logo is not considered an Agency endorsement because the ingredients in the qualifying product must meet objective, scientific criteria established and widely publicized by EPA.

## V. How To Pay Fees

Applicants must submit fee payments at the time of application, and EPA will reject any application that does not contain evidence that the fee has been paid. EPA has developed a website at *https://www.epa.gov/pria-fees/pria-4-fee-determination-decision-tree* to help applicants identify the fee category and the fee. All fees should be rounded up to the whole dollar. Due to changes mandated by the U.S. Department of the Treasury, checks, bank drafts and money orders are no longer acceptable as of September 30, 2015. Credit card payments are only acceptable for amounts less than or equal to $24,999. All payments equal to or above $25,000 can be made by electronic funds transfer via the government payment website, *https://www.pay.gov/.*

More detailed instructions on how to make an application payment in association with a PRIA application are provided at the following website, *https://www.epa.gov/pria-fees/paying-pria-application-fees.*

## VI. How To Submit Applications

Applicants are able to make PRIA submissions electronically via the Pesticide Submission Portal. The Portal is accessed through EPA's Central Data Exchange (CDX) network and requires user registration. Registrants currently submitting CDs or DVDs using the e-Dossier downloadable tool or their own builder tools using EPA's XML guidance can use the portal and forego courier delivery costs. Information on how to submit applications electronically via the Pesticide Submission Portal are provided at *https://www.epa.gov/pesticide-registration/electronic-submissions-pesticide-applications.*

Paper submissions to the Agency should be made at the address given in Unit VII. The applicant should attach documentation that the fee has been paid which in most cases will be *pay.gov* payment acknowledgement.

If the applicant is applying for a fee waiver, the applicant should provide sufficient documentation as described in FIFRA section 33(b)(7) and *https://www.epa.gov/pria-fees/pria-fee-waivers-small-businesses.* The fee waiver request should be easy to identify and separate from the rest of the application and submitted with documentation that at least 25% of the fee has been paid.

If evidence of fee payment (electronic acknowledgement) is not submitted with the application, EPA will reject the application and will not process it further.

After EPA receives an application and payment, EPA performs a screen on the application to determine that the category is correct and that the proper fee amount has been paid. If either is incorrect, EPA will notify the applicant and require payment of any additional amount due. A refund will be provided in case of an overpayment. EPA will not process the application further until the proper fee has been paid for the category of application or a request for a fee waiver accompanies the application and the appropriate portion of the fee has been paid.

EPA will assign a unique identification number to each covered application for which payment has been made. EPA notifies the applicant of the unique identification number. This information is sent by email if EPA has either an email address on file or an email address is provided on the application.

## VII. Addresses for Applications

New covered applications should be identified in the title line with the mail code REGFEE.

- *By U.S. Postal Service mail.* Document Processing Desk (REGFEE), Office of Pesticide Programs (7504P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001.
- *By courier.* Document Processing Desk (REGFEE), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room S–4900, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202–4501.

Couriers and delivery personnel must present a valid picture identification card to gain access to the building. Hours of operation for the Document Processing Desk are 8 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

*List of Subjects:* Environmental protection, Administrative practice and procedure, Pesticides.

Dated: September 24, 2019.

**Alexandra Dapolito Dunn,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2019–21117 Filed 9–30–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2013–0691; FRL–10000–72–OAR]**

## Proposed Information Collection Request; Comment Request; Implementation of the Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Fine Particulate Matter ($PM_{2.5}$) NAAQS Implementation Rule (Renewal)'' (EPA ICR No. 2258.05, OMB Control No. 2060–0611), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of the existing ICR for the $PM_{2.5}$ NAAQS State Implementation Plan (SIP) Requirements Rule, which is currently approved through January 31, 2020. An Agency may not conduct or sponsor, and a person is not required to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before December 2, 2019.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2013–0691, online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information, or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Ms. Leigh Herrington, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0882 or by email at *herrington.leigh@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. 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.

*Abstract:* The final $PM_{2.5}$ NAAQS State Implementation Plan (SIP) Requirements Rule ($PM_{2.5}$ SIP Requirements Rule) was effective on October 24, 2016 (81 FR 58010). This rule provides the framework of Clean Air Act (CAA) requirements for air agencies to develop state implementation plans to help attain and maintain the $PM_{2.5}$ NAAQS. States have applied this framework to develop attainment plans and redesignation requests and maintenance plans for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 2012 $PM_{2.5}$ NAAQS.

The ICR finalized with the $PM_{2.5}$ NAAQS SIP Requirements Rule estimated, for the 3 years following the ICR approval date, the burden associated with plan development and plan revisions related to ongoing implementation efforts in 31 areas designated nonattainment for the 1997, 2006 and 2012 $PM_{2.5}$ NAAQS. The estimates included the burden to develop and submit, and the burden to the EPA to review and to approve or disapprove, attainment plans to meet the requirements prescribed in CAA sections 110 and part D, subparts 1 and 4 of title I. A $PM_{2.5}$ NAAQS attainment plan contains rules and other measures designed to improve air quality and achieve the NAAQS by the deadlines established under the CAA. It also must address several additional CAA requirements related to demonstrating timely attainment and must contain contingency measures in the event the nonattainment area does not achieve reasonable further progress throughout the attainment period or in the event the area does not attain the NAAQS by its attainment date. States that have attained by the applicable attainment date may be eligible to submit a redesignation request and maintenance plan to receive a redesignation from ''nonattainment'' to ''attainment.'' After a state submits an attainment or maintenance plan, the CAA requires the EPA to approve or disapprove the plan. Tribes may develop or submit attainment plans, but are not required to do so.

This ICR supersedes the existing ICR—for which the EPA is proposing renewal in this action—for purposes of $PM_{2.5}$ NAAQS implementation.

*Respondents/affected entities:* State and local governments.

*Respondent's obligation to respond:* Mandatory.

*Estimated number of responses:* 18.

*Frequency of response:* Once per triggering event [*i.e.,* an air agency is required to revise and submit a SIP revision when the area is reclassified to a higher classification, when an areas fails to achieve reasonable further progress, when a Serious nonattainment area fails to timely attain, and/or when a state requests redesignation for a $PM_{2.5}$ nonattainment area that attains the NAAQS)].

*Estimated burden for respondents:* 25,500 hours per year. Burden is defined at 5 CFR 1320.03(b).

*Estimated labor cost for respondents:* $1.6M (present value) per year.

*Estimated cost:* $0 annualized capital or operation & maintenance costs.

*Changes in estimates:* The EPA expects there to be a reduction in excess of 50 percent in the total estimated respondent burden for the period covered by this ICR (February 1, 2020–January 31, 2023) compared with the information collection that is currently approved by OMB. This decrease is due to the fact that the number of areas for which states have ongoing attainment planning obligations has decreased greatly. For the current ICR, the EPA estimated that 31 nonattainment areas would have planning requirements for the current three-year period (February 1, 2017–January 31, 2020). For this renewal, the EPA estimates that only 18 nonattainment areas will have planning requirements to meet during the renewal period (February 1, 2020-January 31, 2023). Three of the areas are nonattainment for multiple $PM_{2.5}$ NAAQS, thus allowing those affected states to take a streamlined approach to meeting their ongoing planning requirements. The burden estimate, detailed in the supporting statement located in the docket for this proposed renewal, accounts for potential new SIP revisions from states with nonattainment areas subject to reclassification and possible SIP revisions (in the form of maintenance plans) from states with areas that are attaining, or are expected to attain, the NAAQS.

Dated: September 19, 2019.

**Scott Mathias,**

*Acting Director, Air Quality Policy Division.*

[FR Doc. 2019–21327 Filed 9–30–19; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK OF THE UNITED STATES

**[Public Notice: 2019–6024]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the United States

**ACTION:** New Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** Comments must be received on or before December 2, 2019 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Donna Schneider, Export-Import Bank, 811 Vermont Ave. NW, Washington, DC 20571.

**SUPPLEMENTARY INFORMATION:** EXIM Bank's borrowers, financial institution policy holders and guaranteed lenders provide form EIB 15–04 Exporter's Certificate for Co-Financed Loan, Guarantee & MT Insurance Programs to U.S. exporters, who certify to the eligibility of their exports for EXIM Bank support. For direct loans and loan guarantees, the completed form is required to be submitted at time of disbursement and held by either the guaranteed lender or EXIM Bank. For MT insurance, the completed forms are held by the financial institution, only to be submitted to EXIM Bank in the event of a claim filing.

EXIM Bank uses the referenced form to obtain information from exporters regarding the export transaction and content sourcing. These details are necessary to determine the value and legitimacy of EXIM Bank financing support and claims submitted. It also provides the financial institutions a check on the export transaction's eligibility at the time it is fulfilling a financing request.

The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib15-04.pdf*.

*Title and Form Number:* EIB 15–04 Exporter's Certificate for Co-Financed Loan, Guarantee & MT Insurance Programs.

*OMB Number:* 3048–0052.

*Type of Review:* Regular.

*Need and Use:* The information collected will allow EXIM Bank to determine compliance and content for co-financed transaction requests submitted to the Export-Import Bank under its insurance, guarantee, and direct loan programs.

*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 30.

*Estimated Time per Respondent:* 30 minutes.

*Annual Burden Hours:* 15 hours.

*Frequency of Reporting of Use:* As required.

**Government Expenses**

*Reviewing time per year:* 0.5 hours.

*Average Wages per Hour:* $42.50.

*Average Cost per Year:* $21.25 (time*wages).

*Benefits and Overhead:* 20%.

*Total Government Cost:* $25.5.

**Bassam Doughman,**

*IT Project Manager, Office of the Chief Information Officer.*

[FR Doc. 2019–21220 Filed 9–30–19; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Thursday, October 17, 2019 at 10:00 a.m.

**PLACE:** 1050 First Street, NE, Washington, DC (12th Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Draft Interpretive Rule Concerning Prohibited Activities Involving Foreign Nationals

Management and Administrative Matters

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

**Authority:** Government in the Sunshine Act, 5 U.S.C. 552b.

**Laura E. Sinram,**

*Acting Secretary and Clerk of the Commission.*

[FR Doc. 2019–21480 Filed 9–27–19; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 191 0068]**

### DTE Energy Company; Analysis of Agreement Containing Consent Orders To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 31, 2019.

**ADDRESSES:** Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''DTE Energy Company; File No. 191 0068'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Michael Blaisdell (202–326–3220), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 13, 2019), on

the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 31, 2019. Write ''DTE Energy Company; File No. 191 0068'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''DTE Energy Company; File No. 191 0068'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 31, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

## Analysis of Agreement Containing Consent Orders To Aid Public Comment

### I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from DTE Energy Company (''DTE''), Enbridge Inc. (''Enbridge''), and NEXUS Gas Transmission, LLC (''Nexus'') (collectively, the ''Respondents''). Nexus is a 50/50 joint venture between DTE and Enbridge. The Consent Agreement would remedy the anticompetitive effects stemming from a January 2019 transaction (the ''Transaction'') in which Nexus intends to purchase Generation Pipeline LLC (''Generation'') from a group of sellers including North Coast Gas Transmission LLC (''NCGT'').

Generation's primary asset is a 23-mile intrastate natural gas pipeline serving the Toledo, Ohio area. NCGT also owns another natural gas transportation pipeline in Ohio (the ''North Coast System''), which includes a spur running slightly east of Toledo, and which Nexus is not acquiring. The Transaction's sale agreement prohibited NCGT from competing to provide natural gas pipeline transportation within a restricted area encompassing parts of Lucas, Ottawa, and Wood counties in Ohio (the ''Restricted Area'') for a period of three years post-closing (the ''Non-Compete''). Under the terms of the proposed Consent Agreement, and to maintain competition in the affected market post-merger, Respondents are required to strike the Non-Compete from the purchase agreement and are prohibited from entering similarly anticompetitive agreements with their pipeline competitors in this market.

At the time of the Transaction, Generation and NCGT were two of a small number of natural gas pipeline transportation options capable of serving customers in the Restricted Area. The Commission's Complaint alleges that the Transaction violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating actual and potential competition between NCGT and any other pipeline competitor in a market no broader than the pipeline transportation of natural gas to Lucas, Ottawa, and Wood counties in Ohio.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

### II. The Respondents

Respondent DTE Energy Company is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan with its executive offices and principal place of business located at One Energy Plaza, Detroit, Michigan 48226.

Respondent Enbridge Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its executive offices and principal place of business located at 200 Fifth Avenue Place, Calgary, Alberta, T2P 3L8.

Respondent NEXUS Gas Transmission LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the

State of Delaware with its executive offices and principal place of business located at 5400 Westheimer Court, Houston, Texas 77056. Nexus is a 50/50 joint venture between DTE and Enbridge.

### III. Relevant Markets and Market Structure

The relevant product market at issue is the pipeline transportation of natural gas. Even if pipeline transportation rates increased slightly, natural gas shippers would continue to use pipelines, as no economic or practical alternative exists. Other natural gas delivery methods (such as boat, rail, or truck) are far more costly, less reliable, and potentially more hazardous than pipeline transportation. Moreover, particularly given low natural gas prices, a small increase in natural gas pipeline transportation rates would not lead customers to switch to other (more costly) fuels.

A relevant geographic market within which to analyze the effects of the Transaction is an area no broader than Lucas, Ottawa, and Wood counties in Ohio (the ''Relevant Area''), which contains the closest geographic overlaps between the Generation Pipeline and the North Coast Pipeline. Although pipeline options may vary by customer delivery location, any customer for whom the Generation Pipeline and the North Coast pipeline are both competitive options are located within the Relevant Area.

Market concentration in this industry is location-specific and depends on the pipeline options available near a given delivery point. Many customers connect only to one pipeline and cannot economically connect to any other. For large industrial customers looking to establish a direct connection to a natural gas pipeline system, concentration is a factor of how many suppliers are close enough to connect economically, while also meeting the customer's volume and service requirements. The Commission's Complaint alleges that the Generation pipeline and the NCGT pipeline may be the best alternatives for a subset of large non-residential customers in the Toledo area who are located reasonably close to both pipelines.

### IV. Effects of the Transaction

The Commission's Complaint alleges that, absent the proposed Consent Agreement, the Transaction would result in competitive harm in the natural gas pipeline transportation market in the Relevant Area. By prohibiting NCGT from competing to provide natural gas transportation within the Restricted Area, the Non-Compete would harm customers who would otherwise benefit from competition from NCGT. The Non-Compete is not reasonably limited in scope to protect a legitimate business interest. In this instance, the provision does not protect any significant intellectual property, goodwill, or customer relationship necessary to protect Nexus' investment. A mere general desire to be free from competition following a transaction is not a legitimate business interest. Moreover, even if a legitimate interest existed, the geographic scope of the Non-Compete would be broader than reasonably necessary, because, in part, it prevents NCGT from competing for any opportunity in the restricted area, even for opportunities that were unforeseen at the time of the Transaction.

### V. Entry Conditions

Entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Merger. Entry into the pipeline transportation of natural gas is a complicated, expensive, and time-consuming endeavor. In addition to completing a lengthy regulatory review and approval process, an entrant would need to secure sufficient precedent agreements by shippers, obtain rights of way, and overcome environmental or landowner hurdles.

### VI. The Proposed Consent Agreement

The proposed consent order (''Order'') effectively resolves the competitive concerns raised by the Sale Agreement's Non-Compete. First, the Order requires the parties to execute a revised Sale Agreement that eliminates the Non-Compete and associated language.

Next, Section II.B of the Order prohibits Nexus and its parents, DTE and Enbridge, (collectively ''Respondents''), from entering into, enforcing, or soliciting any written or oral agreement that restricts competition between one or more Respondents and a ''Pipeline Competitor'' to provide natural gas pipeline transportation to the Relevant Area, without prior Commission approval. The Order defines ''Pipeline Competitor'' as a firm that owns, operates, or markets capacity on a natural gas pipeline. This definition would include NCGT and other pipeline companies, as well as a situation where a customer with long-term capacity rights might resell its capacity and effectively act as a competitor.

In an industry where joint ventures and other competitor collaborations frequently occur, some arrangements that the Order might capture could advance legitimate purposes. The Order's prior approval provision gives Respondents the opportunity to advocate for these arrangements and the Commission to evaluate any attendant restrictions on a case-by-case basis.

The Order also requires Respondents to provide prior notice of intent to acquire the North Coast System or any other natural gas pipeline in the Relevant Area. It also requires Respondents to file annual compliance reports with the Commission for 10 years following the Order's issuance.

The sole purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. This analysis does not constitute an official interpretation of the proposed Consent Agreement or modify its terms in any way.

By direction of the Commission.

**April J. Tabor,**

*Acting Secretary.*

[FR Doc. 2019–21316 Filed 9–30–19; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Embedded Research in Care Delivery Systems.*'' In accordance with the Paperwork Reduction Act of 1995, AHRQ invites the public to comment on this proposed information collection. This proposed information collection was previously published in the **Federal Register** on July 29, 2019 and allowed 60 days for public comment. AHRQ received no substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by 30 days after date of publication.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by

email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Proposed Project

''*Embedded Research in Care Delivery Systems*''

Embedded researchers contribute to learning health systems by collaborating with delivery system stakeholders to produce innovations and evidence that can be rapidly implemented to improve the outcomes of individual and populations and health system performance.

Research is defined in this proposed project as *embedded* when it is conducted by an investigator who is employed or closely affiliated with the care delivery system and when the research project at least partially addresses operational concerns of the system (*e.g.* ways to improve care quality, value, or other aspects of system performance (*e.g.,* patient and staff satisfaction).

AHRQ is developing tools and findings to support learning health systems and embedded research and is funding training of researchers to conduct embedded research. The proposed project has the following goals:

- Select health care delivery systems that currently apply diverse and distinctive strategies for embedded research.
- Conduct and report on qualitative case studies documenting how embedded research is prioritized, funded, managed, conducted, and used in these systems.
- Specify several promising strategies for organizing and conducting embedded research.
- Provide summaries of study findings that will stimulate consideration of current and future strategies for embedded research among funders, trainers, and delivery system leaders.

The proposed project does *not* intend to create a comprehensive inventory of current practice in embedded research or to provide a representative sample of embedded research activities. Instead, the illustrative case studies will stimulate discussion at AHRQ and elsewhere about how to prepare researchers to conduct embedded research. Additionally, the case studies may provide insights to health research funding agencies about ways that funding criteria can influence the conduct of embedded research. The case studies may also provide health care leaders with illustrations of some of the potential benefits of supporting embedded research and some of the challenges of alternative approaches to incorporating such research into care delivery systems.

## Method of Collection

Based on an environmental scan, six to eight care delivery systems will be selected that employ people engaged in embedded research; have engaged in this type of research for at least two fiscal years; and take a distinctive approach to it or are recognized as a leader in this field. At least one system will be selected that has a mission and a commitment to serving *AHRQ's priority populations.* The investigators will conduct phone interviews with up to eight people in each of the selected systems. The interview subjects in each delivery system will include at least one occupant of each of the following roles:

Executive-level manager; person exercising oversight over embedded research activities; person from a service line or care sector in which several embedded research projects have been carried out; lead investigator on one or more embedded research projects. Interviews will be coded and case study summaries created for each system. The reports will describe promising embedded research strategies, potential benefits and challenges of this type of research, and lessons learned about addressing challenges. The findings will be shared with AHRQ leadership, other health system leaders and funder, and with the health services research community.

## Estimated Annual Respondent Burden

Exhibit 1 is based on the following assumptions: No more than 8 subjects will participate in the main round of interviews in each system (site). There will be a maximum of 8 sites. If supplementary information is needed on selected projects, no more than 3 supplementary interviews will be conducted. Each supplementary interview will include 3–4 participants, with a total of no more than 10 participants in the whole set of supplementary interviews.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Collection activity—interviews | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Interviews with executive-level subjects | 10 | 1 | 1 | 10 |
| Interviews with physicians | 22 | 1 | 1 | 22 |
| Interviews with researchers and other operations staff | 42 | 1 | 1 | 42 |
| Total | | | | 74 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Interview participants | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Executive level (code 11–1011) | 10 | 10 | $96.22 | $962.20 |
| Physicians (code 29–1060) | 22 | 22 | 101.43 | 2,231.46 |
| Researchers and other operations staff (based on Operations Research Analysts code 15–2031) | 42 | 42 | 42.48 | 1,784.16 |
| Total | | | | 4,977.82 |

* National Compensation Survey: Occupational wages in the United States May 2018 ''U.S. Department of Labor, Bureau of Labor Statistics.''

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 25, 2019.

**Virginia L. Mackay-Smith,**

*Associate Director.*

[FR Doc. 2019–21239 Filed 9–30–19; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–19–19AXA]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Annual Reporting of the Rape Prevention and Education (RPE) Program: CE19–1902 Cooperative Agreement'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 5, 2019 to obtain comments from the public and affected agencies. One public comment public comment was received. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

Annual Reporting of the Rape Prevention and Education (RPE) Program: CE19–1902 Cooperative Agreement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

CDC's Division of Violence Prevention (DVP) provides national leadership in prevention of sexual violence (SV) perpetration and victimization before it begins (*i.e.,* primary prevention). DVP administers the RPE Program, which provides funding to health departments in all 50 states, the District of Columbia (DC), Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands. The CDC seeks OMB approval for three years to collect information related to implementation and outcomes annually from recipients funded under the Rape Prevention and Education (RPE): Using The Best Available Evidence for Sexual Violence Prevention cooperative agreement.

RPE Program recipients or designated delegates will submit data annually into the online data system, DVP Partners Portal. Recipients will monitor and report progress on their goals, objectives, and activities, as well as relevant information on the implementation of their prevention strategies, outcomes, evaluation, and state action plan.

Information to be collected will provide crucial data for program performance monitoring. Information collected will allow CDC to help ensure consistency in documenting, enhancing accountability of the use of federal funds, providing timely program reports and responses to information requests, such as Congressional requests mandated by the authorizing legislation, improve real-time communications between CDC and RPE recipients, and strengthening CDC's capacity to provide responsive data-driven technical assistance and to monitor and evaluate recipients' progress and performance.

Submission of the Annual Progress Report is required for cooperative agreement grantees. The total estimated annualized burden hours are 440. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| RPE-funded Health Departments (State, DC, and Territories) and their Designated Delegates. | Annual Reporting—Initial Population | 55 | 1 | 4 |
| | Annual Reporting—Subsequent Reporting | 55 | 2 | 2 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–21167 Filed 9–30–19; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–3767]**

### Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Immunology Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on scientific issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on November 13 and 14, 2019, from 8 a.m. to 6 p.m.

**ADDRESSES:** Doubletree by Hilton DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900. The hotel's website is at: *https://doubletree3.hilton.com/en/hotels/maryland/doubletree-by-hilton-washington-dc-north-gaithersburg-GAIGWDT/index.html.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comments on this meeting. The docket number is FDA–2019–N–3767. The docket will close on December 16, 2019. Submit either electronic or written comments on this public meeting to the docket by December 16, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submission) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before October 28, 2019, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://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 Submission'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–N–3767 for ''Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, 301–796–0400, *FDA.MetalImplants@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* On November 13 and 14, 2019, the committee will discuss the topic of immunological responses to metal-containing products regulated as medical devices. The discussion will focus on metal-containing implants as well as dental amalgam. Implants are medical devices that are placed into a surgically or naturally formed opening of the human body and are intended to remain there after the procedure for an extended period of time (typically, greater than 30 days). For decades, metal-containing implants have been used in a large number of medical specialties including cardiology, orthopedics, dentistry, gastroenterology, and neurology or neurosurgery. Recent postmarket issues with some metal-on-metal orthopedic implants and gynecological metal-containing implants have raised questions about the potential for some patients to develop unexpected or heightened biological responses to the implant. These may include local (peri-implant) adverse events and potentially systemic manifestations, which may impact a patient's quality of life and necessitate medical or surgical intervention. While not considered an implant, dental amalgam is included in this discussion because of its potential for patient and user exposure to mercury compounds and some purported similarities in the adverse biological responses and clinical manifestations elicited by some dental amalgams to that of traditional metal implants.

FDA is convening this committee to promote an open public discussion of, and seek expert opinion on, currently available scientific and clinical data pertaining to the biological responses to metal implants and dental amalgam and the potential associated clinical sequelae. The committee will be asked to discuss and provide recommendations regarding:

- The extent immunological responses to certain metals may cause or contribute to device-related local and systemic adverse effects as well as the potential underlying mechanism(s) involved and corresponding clinical manifestations.
- Patient characteristics, metal types, and/or anatomical considerations that may put an individual at higher risk for a heightened immunological response to a metal-containing implant, and methods that may assist in their identification.
- Mitigations that may reduce the risk for unintended immunological responses, including changes to device composition and design.
- The evidentiary gaps in biomedical research and clinical/diagnostic management associated with immunological responses to metal implants.
- The adequacy, conclusions, and evidence gaps identified by a systemic literature review aimed to assess the recent epidemiologic and clinical evidence on adverse health effects reported in relation to occupational or non-occupational exposure to dental amalgam.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

FDA plans to provide a live webcast of the November 13 and 14, 2019, meeting of the Immunology Devices Panel. While the Center for Devices and Radiological Health is working to make webcasts available to the public, there may be instances where the webcast transmission is not successful; staff will work to reestablish the transmission as soon as possible. The link for the webcast is available at: *https://collaboration.fda.gov.* Further information regarding the webcast, including the web address for the webcast, will be made available at least 2 days in advance of the meeting at the following website:

November 13, 2019: *http://fda.yorkcast.com/webcast/Play/390aea8fa1db4d42ba59e514b24e8f301d.*

November 14, 2019: *http://fda.yorkcast.com/webcast/Play/d4174e54b00e4f7ab8ffb3ec8c99d3f51d.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All written and electronic submissions made to the docket on or before October 28, 2019, will be provided to the panel. Oral presentations from the public will be scheduled on November 13, 2019, between approximately 2:15 p.m. and 3:15 p.m., and on November 14, 2019, between approximately 8:15 a.m. and 9:15 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 16, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 17, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a

disability, please contact AnnMarie Williams, at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–21248 Filed 9–30–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–4329]**

### Determination That KENALOG (Triamcinolone Acetonide) Ointment, 0.025% and 0.1%, and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table are no longer being marketed.

| Application No. | Drug name | Active ingredient(s) | Strength(s) | Dosage form/route | Applicant |
|---|---|---|---|---|---|
| NDA 011600 | KENALOG | Triamcinolone Acetonide | 0.025%; 0.1% | Ointment; Topical | Mylan Pharmaceuticals, Inc. |
| NDA 012827 | ROBINUL | Glycopyrrolate | 1 milligram (mg) | Tablet; Oral | Casper Pharma LLC. |
| | ROBINUL FORTE | Glycopyrrolate | 2 mg | Tablet; Oral. | |
| NDA 018029 | RITALIN–SR | Methylphenidate Hydrochloride. | 20 mg | Extended-Release Tablet; Oral. | Novartis Pharmaceuticals, Corp. |
| NDA 018164 | ANAPROX | Naproxen Sodium | Equivalent to (EQ) 250 mg Base. | Tablet; Oral | ATNAHS Pharma U.S., Ltd. |
| NDA 018405 | AYGESTIN | Norethindrone Acetate | 5 mg | Tablet; Oral | Teva Branded Pharmaceutical Products R&D, Inc. |
| NDA 018452 | SEPTRA | Sulfamethoxazole; Trimethoprim. | 16 mg/milliliter (mL); 80 mg/mL. | Injectable; Injection | Monarch Pharmaceuticals, Inc. |
| NDA 018703 | ZANTAC 150 | Ranitidine Hydrochloride | EQ 150 mg Base | Tablet; Oral | GlaxoSmithKline. |
| | ZANTAC 300 | Ranitidine Hydrochloride | EQ 300 mg Base | Tablet; Oral. | |
| NDA 019111 | TUSSIONEX PENNKINETIC. | Chlorpheniramine Polistirex; Hydrocodone Polistirex. | EQ 8 mg Chlorpheniramine Maleate/5 mL; EQ 10 mg Hydrocodone Bitartrate/5 mL. | Extended-Release Suspension; Oral. | UCB, Inc. |
| NDA 019507 | KERLONE | Betaxolol Hydrochloride | 10 mg; 20 mg | Tablets; Oral | Sanofi-Aventis U.S. LLC. |
| NDA 019537 | CIPRO | Ciprofloxacin Hydrochloride. | EQ 100 mg Base; EQ 750 mg Base. | Tablet; Oral | Bayer Healthcare Pharmaceuticals, Inc. |
| NDA 019937 | ADENOCARD | Adenosine | 3 mg/mL | Injectable; Injection | Astellas Pharma U.S., Inc. |
| NDA 020415 | REMERON | Mirtazapine | 45 mg | Tablet; Oral | Organon USA, Inc. |
| NDA 020528 | MAVIK | Trandolapril | 1 mg; 2 mg; 4 mg | Tablet; Oral | AbbVie, Inc. |
| NDA 020864 | MAXALT | Rizatriptan Benzoate | EQ 5 mg Base | Tablet; Oral | Merck Sharp & Dohme Corp. |
| NDA 020865 | MAXALT–MLT | Rizatriptan Benzoate | EQ 5 mg Base | Orally Disintegrating Tablet; Oral. | Do. |
| NDA 020945 | NORVIR | Ritonavir | 100 mg | Capsule; Oral | AbbVie, Inc. |
| NDA 021131 | ZYVOX | Linezolid | 400 mg/200 mL (2 mg/mL) | Injectable; Injection | Pharmacia & Upjohn Co. |

| Application No. | Drug name | Active ingredient(s) | Strength(s) | Dosage form/route | Applicant |
|---|---|---|---|---|---|
| NDA 021381 | XYLOCAINE DENTAL WITH EPINEPHRINE. | Epinephrine; Lidocaine Hydrochloride. | 0.01 mg/mL/2%; 0.02 mg/mL/2%. | Injectable; Injection | DENTSPLY Pharmaceutical, Inc. |
| NDA 021511 | COPEGUS | Ribavirin | 200 mg; 400 mg | Tablet; Oral | Hoffmann La-Roche, Inc. |
| NDA 022325 | NEXTERONE | Amiodarone Hydrochloride | 50 mg/mL | Injectable; Injection | Baxter Healthcare, Corp. |
| NDA 050605 | CEFTIN | Cefuroxime Axetil | EQ 125 mg Base; EQ 250 mg Base; EQ 500 mg Base. | Tablet; Oral | GlaxoSmithKline. |
| NDA 050730 | ZITHROMAX | Azithromycin | EQ 600 mg Base | Tablet; Oral | Pfizer, Inc. |
| NDA 050746 | BACTROBAN | Mupirocin Calcium | EQ 2% Base | Cream; Topical | GlaxoSmithKline. |
| NDA 205103 | YOSPRALA | Aspirin; Omeprazole | 81 mg/40 mg; 325 mg/40 mg. | Delayed-Release Tablet; Oral. | Genus Lifesciences, Inc. |

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: September 24, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–21201 Filed 9–30–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–D–4247]**

### Patient-Focused Drug Development: Methods To Identify What Is Important to Patients; Draft Guidance for Industry, Food and Drug Administration Staff, and Other Stakeholders; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry, FDA staff, and other stakeholders entitled ''Patient-Focused Drug Development: Methods To Identify What Is Important to Patients.'' This guidance (Guidance 2) is the second in a series of four methodological guidance documents that FDA committed to develop to describe how to collect and submit information from patients and caregivers to be used for medical product development and regulatory decision-making.

**DATES:** Submit either electronic or written comments on the draft guidance by December 30, 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–4247 for ''Patient-Focused Drug Development: Methods To Identify What Is Important to Patients.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 240–402–6525, Fax: 301–847–8443, *Meghana.Chalasani@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry, FDA staff, and other stakeholders entitled ''Patient-Focused Drug Development: Methods To Identify What Is Important to Patients.'' This guidance (Guidance 2) is the second in a series of four methodological patient-focused drug development guidance documents that FDA committed to develop to describe how stakeholders (patients, researchers, medical product developers, and others) can collect and submit information from patients and caregivers to be used for medical product development and regulatory decision-making. This series of guidance documents is intended to facilitate the advancement and use of systematic approaches to collect and use robust and meaningful patient and caregiver input that can more consistently inform medical product development and regulatory decision-making. The purpose of Guidance 2 is to present a range of methods and established best research practices to identify what is important to patients with respect to burden of disease, burden of treatment, and the benefits and risks in the management of the patient's disease. The methods and best practices presented can help elicit relevant information from patients and other stakeholders, such as how their disease affects their daily lives; what they find most troublesome; and the challenges, problems, and burdens of the treatment for the disease.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Patient-Focused Drug Development: Methods To Identify What Is Important to Patients.'' 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. Additional Information

Section 3002 of Title III, Subtitle A of the 21st Century Cures Act (Pub. L. 114–255), directs FDA to develop patient-focused drug development guidance to address a number of areas, including under section 3002(c)(2) (methodological approaches that may be used to develop and identify what is important to patients with respect to burden of disease, burden of treatment, and the benefits and risks in the management of the patient's disease).

In addition, FDA committed to meet certain performance goals under the sixth authorization of the Prescription Drug User Fee Act. These goal commitments were developed in consultation with patient and consumer advocates, healthcare professionals, and other public stakeholders, as part of negotiations with regulated industry. Section J.1 of the commitment letter, ''Enhancing the Incorporation of the Patient's Voice in Drug Development and Decision-Making'' (available at *https://www.fda.gov/media/99140/download*), outlines work, including the development of a series of guidance documents and associated public workshops to facilitate the advancement and use of systematic approaches to collect and use robust and meaningful patient and caregiver input that can more consistently inform drug development, and, as appropriate, regulatory decision-making.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: September 25, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–21226 Filed 9–30–19; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; RNCP-Wide Dosimetry Guidance & Monitoring of Sources and Irradiation Protocols (Clinical Trial Not Allowed).

*Date:* October 22, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892.

*Contact Person:* Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Rm 3G42B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5070, *rosenthalla@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 25, 2019.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–21223 Filed 9–30–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Global Infectious Disease Research Administration Development Award for Low-and Middle-Income Country Institutions (G11).

*Date:* October 16, 2019.

*Time:* 9:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Ann Marie M. Brighenti, Ph.D., Scientific Review Officer, Program Management & Operations Branch, Division of Extramural Activities/Scientific Review Program, RM 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *cruza@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Centers for Medical Countermeasures Against Radiation Consortium.

*Date:* October 23–25, 2019.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW, Washington, DC 20037.

*Contact Person:* Julio C. Aliberti, Ph.D., Scientific Review Officer, Immunology Review Branch, Division of Extramural Activities/Scientific Review Program, 3G53A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–9823, 301–761–7322, *julio.aliberti@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 25, 2019.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–21224 Filed 9–30–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP and the full meeting agenda will be posted on the SACHRP website at: *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

**DATES:** The meeting will be held on Wednesday, October 16, 2019, from 8:30 a.m. until 4:30 p.m., and Thursday, October 17, 2019, from 8:30 a.m. until 3:00 p.m.

**ADDRESSES:** 6700B Rockledge Drive, Bethesda, MD 20817.

**FOR FURTHER INFORMATION CONTACT:** Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 8:30 a.m., on Wednesday, October 16, 2019, followed by opening remarks from Dr. Jerry Menikoff, Director of OHRP and Dr. Stephen Rosenfeld, SACHRP Chair.

The SAS subcommittee will discuss their revised recommendation questions posed to SACHRP regarding Deceased Organ Intervention Research (DDIR), with an emphasis on recipient informed consent. This will be followed by a discussion of Ethical Issues and Regulatory Considerations Regarding Re-consent, and Charging Subjects to Participate in Clinical Trials. The meeting is scheduled to end at approximately 4:30 p.m.

The meeting will begin at 8:30 a.m., Thursday, October 17, 2019. The SOH subcommittee will discuss draft recommendations regarding End User Licensing Agreements & Terms of Service; Considerations for IRB Review, and finally, Site Monitoring under the New sIRB Mandate. Additional time is reserved for emerging topics and continuing the previous day's discussions. The meeting will adjourn at approximately 3:00 p.m.

Time will be allotted for public comment on both days. On-site registration is required for participation in the live public comment session. Note that public comment must be relevant to topics currently being addressed by the SACHRP. Individuals submitting written statements as public comment should email or fax their comments to SACHRP at *SACHRP@hhs.gov* at least five business days prior to the meeting.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify one of the designated SACHRP points of contact at the address/phone number listed above at least one week prior to the meeting.

Dated: September 25, 2019.

**Julia G. Gorey,**

*Executive Director, Secretary's Advisory Committee on Human Research Protections.*

[FR Doc. 2019–21255 Filed 9–30–19; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines. If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter. This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

**FOR FURTHER INFORMATION CONTACT:** Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

**HHS-Certified Instrumented Initial Testing Facilities**

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories).

**HHS-Certified Laboratories**

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226.

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 South lake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quiver Road, Leone, KS 66215–2802, 800–445–6917.

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories).

Desert Ox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411.

Drug, Scan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare,*245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Charles P. LoDico,**

*Chemist.*

[FR Doc. 2019–21176 Filed 9–30–19; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice of determination.

**SUMMARY:** The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Cameron County, Texas and Hidalgo County, Texas.

**DATES:** This determination takes effect on October 1, 2019.

**SUPPLEMENTARY INFORMATION:** Important missions of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

**Determination and Waiver**

*Section 1*

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of high illegal entry. Between October 1, 2018, and August 31, 2019, the Border Patrol apprehended over 325,000 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same time period, the Border Patrol had over 900 separate drug-related events between border crossings in the Rio Grande Valley Sector, through which it seized over 112,000 pounds of marijuana, over 2,300 pounds of cocaine, over 90 pounds of heroin, and over 1,600 pounds of methamphetamine.

Owing to the high levels of illegal entry within the Rio Grande Valley Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will construct roads and mechanical gates within gaps of existing barriers in the vicinity of the United States border in the Rio Grande Valley Sector. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such

areas are not located within any of the areas identified in sections 231 and 232(c) of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Public Law 116–6, Div. A, Title II, §§ 231–232.

*Section 2*

I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project areas''):

- In Cameron County, starting approximately one-tenth (0.1) of a mile west of a gap in the existing barrier commonly referred to as the Sabal Palm gate location, which is situated approximately one-half (0.5) of a mile south of the intersection of Sabal Palm Grove Road and Southmost Road, and extending to approximately one-tenth (0.1) of a mile northeast of the Sabal Palm Gate location.
- In Cameron County, starting approximately one-tenth (0.1) of a mile west of a gap in the existing barrier commonly referred to as the Landrums gate location, which is situated approximately two-tenths (0.2) of a mile southeast of the intersection of Military Highway and South Sam Houston Boulevard, and extending to approximately one-tenth (0.1) of a mile east of the Landrums gate location.
- In Cameron County, starting approximately one-tenth (0.1) of a mile north of a gap in the existing barrier commonly referred to as the Rio Grande Avenue gate location, which is situated immediately east of the intersection of Rio Grande Avenue and Robertson Road, and extending to approximately one-tenth (0.1) of a mile south of the Rio Grande Avenue gate location.
- In Cameron County, starting approximately one-tenth (0.1) of a mile west of a gap in the existing barrier, commonly referred to as the Robertson Road gate location, which is situated immediately north of the intersection of Robertson Road and Rio Grande Avenue, and extending to approximately one-tenth (0.1) of a mile east of the Robertson Road gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the 263 Road gate location, which is situated on the International Boundary Water Commission (''IBWC'') levee approximately one-quarter (0.25) of a mile southwest of the intersection of Military Road and Domingo Trevino Drive, and extending to approximately one-tenth (0.1) of a mile southeast of the 263 Road gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile north of a gap in the existing levee wall commonly referred to as the Strawberry Farms gate location, which is situated on the IBWC levee approximately four-tenths (0.4) of a mile southwest of the intersection of Villarre Crispin Street and Military Road, and extending to approximately eight-tenths (0.8) of a mile southeast of the Strawberry Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Hoki's gate location, which is situated on the IBWC levee approximately nine-tenths (0.9) of a mile southeast of the intersection of Chihuahua Road and Military Road, and extending to approximately one-tenth (0.1) of a mile southeast of the Hoki's gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Metz Farms gate location, which is situated on the IBWC levee approximately six-hundredths (.06) of a mile southeast of the intersection of Chihuahua Road and Military Road, and extending to approximately one-tenth (0.1) of a mile southeast of the Metz Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile west of the gap in the existing levee wall, commonly referred to as the Mudhole Road gate location, which is located on the IBWC levee approximately one-tenth (0.1) of a mile southeast of the intersection of Manuelita Rios Road and Farm to Market Road 1427, and extending to approximately one-tenth (0.1) of a mile east of the Mudhole Road gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Boat Ramp Gate (Cistern) gate location, which is situated four-tenths (0.4) of a mile northwest of the intersection of County Road 1598 and the IBWC levee, and extending to approximately one-half (.0.5) of mile southeast of the Boat Ramp Gate (Cistern) gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the Fuller gate location, which is situated at the intersection County Road 1598 and the IBWC levee, and extending to approximately six-tenths (0.6) of a mile east of the Fuller gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile north of a gap in the existing levee wall commonly referred to as the Basin Ramp (PGR) gate location, which is situated approximately one-tenth (0.1) of a mile southwest of where Desiga Way terminates at Progresso Settling Basin, and extending to approximately one-tenth (0.1) of a mile south of the Basin Ramp (PGR) gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the Progresso Pump gate location, which is situated approximately two-tenths (0.2) of mile southwest of the intersection of Moon Lake Drive South and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile northeast of the Progresso Pump gate location.
- In Hidalgo County, starting approximately two-tenths (0.2) of a mile west of a gap in the existing levee wall commonly referred to as the Octavio Garcia Ramp gate location, which is situated three-hundredths (0.03) of a mile east of the intersection of County Road 793 and County Road 1702, and extending to approximately one-tenth (0.1) of a mile east of the Octavio Garcia Ramp gate location.
- In Hidalgo County, starting approximately seven-tenths (0.7) of a mile west of a gap in the existing levee wall commonly referred to as the Beckwith Ramp gate location, which is situated at the intersection of County Road 793 and County Road 1706, and extending to approximately one-tenth of a mile east of the Beckwith Ramp gate location.
- In Hidalgo County, starting approximately one-half (0.5) of a mile west of a gap in the existing levee wall commonly referred to as the Swamp Refuge gate location, which is situated approximately four-tenths (0.4) of a mile east of the intersection of County Road 793 and County Road 1706, and extending to approximately one-tenth (0.1) of a mile east of the Swamp Refuge gate location.
- In Hidalgo County, starting approximately six-tenths (0.6) of a mile northwest of a gap in the existing levee wall commonly referred to as the Fuller Ramp gate location, which is situated approximately one (1) mile east of the intersection of County Road 793 and County Road 1706, and extending to approximately one-tenth (0.1) of a mile southeast of the Fuller Ramp gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the East of Hidalgo Port of Entry gate location, located approximately two-tenths (0.2)

of a mile southwest of the intersection of International Boulevard and South Bridge Street, and extending to approximately one-tenth (0.1) of a mile northeast of the East of Hidalgo Port of Entry gate location.

- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Bell Brothers Road gate location, which is situated at the intersection of Cantu Trail Road and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile southeast of the Bell Brothers Road gate location.
- In Hidalgo County, starting approximately six-tenths (0.6) of a mile southwest of a gap in the existing levee wall commonly referred to as the McManus Farms gate location, which is situated at the intersection of County Road 1582 and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile southeast of the McManus Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the American Farms gate location, which is situated at the intersection of County Road 1594 and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile northeast of the American Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the Munoz gate location, which is situated approximately two-tenths (0.2) of a mile northeast of the intersection of County Road 1594 and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile northeast of the Munoz gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of the Penitas Pump House on the IBWC levee and extending in a southeasterly direction for approximately one-quarter (0.25) of a mile to a point on the IBWC levee.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Federal Land Policy and Management Act (Pub L. 94–579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 *et seq.*)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd–668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 *et seq.*)); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451 *et seq.*)); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede the previous waivers published in the **Federal Register** on April 8, 2008, (73 FR 19077 and 73 FR 19078) and October 11, 2018, (83 FR 51472), which shall remain in full force and effect in accordance with their respective terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

**Kevin K. McAleenan,**

*Acting Secretary of Homeland Security.*

[FR Doc. 2019–21188 Filed 9–30–19; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–FAC–2019–N110; FVWF97920900000–FF09F42300–XXX]**

### Sport Fishing and Boating Partnership Council Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (SFBPC), in accordance with the Federal Advisory Committee Act. The SFBPC's purpose is to advise the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, on aquatic conservation endeavors that benefit recreational resources and recreational boating and that encourage partnerships

among industry, the public, and the government.

**DATES:** *Meeting:* The SFBPC will meet on Wednesday, October 16, 2019, from 8:30 a.m. to 4:30 p.m., and Thursday, October 17, 2019, from 8:30 a.m. to 1:30 p.m. The meeting is open to the public. For security purposes, registration is required. For more information, contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**, below).

*Comment submission:* You may submit written comments in advance of the meeting by emailing them to the Designated Federal Officer by close of business on October 11, 2019.

*Requests for accommodation:* Please contact the Designated Federal Officer no later than October 8, 2019.

**ADDRESSES:** *Meeting location:* Homewood Suites, 317 North Rampart Street, New Orleans, Louisiana 70112.

**FOR FURTHER INFORMATION CONTACT:** Linda Friar, Designated Federal Officer, by telephone at 703–358–2056, or by email at *linda_friar@fws.gov.*

*Accessibility:* The U.S. Fish and Wildlife Service is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the Designated Federal Officer, by using the contact information above or via TTY at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (SFBPC), in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2). Established in 1993, the SFBPC advises the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, on aquatic conservation endeavors that benefit recreational resources and recreational boating and that encourage partnerships among industry, the public, and the government.

## Meeting Agenda

- Review action items.
- Review formal and informal communications.
- Program updates.
- SFBPC subcommittee updates.
- New business.

The final agenda and other related meeting information will be posted on the SFBPC website at *https://www.fws.gov/sfbpc/* by September 30, 2019. Summary minutes of the meeting will be maintained by the Designated Federal Officer and will be available for public inspection within 90 days after the meeting at *https://www.fws.gov/sfbpc/.*

## Public Input

If you provide a written comment, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority** 5 U.S.C. Appendix 2.

Dated: September 10, 2019.

**David W. Hoskins,**

*Assistant Director for Fish and Aquatic Conservation.*

[FR Doc. 2019–21205 Filed 9–30–19; 8:45 am]

BILLING CODE 4333–15–P

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# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–HQ–IA–2019–N113; FXIA167109ADV19–198–FF09A00000]**

## International Wildlife Conservation Council; Public Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the U.S. Fish and Wildlife Service announces a public meeting of the International Wildlife Conservation Council, which provides advice and recommendations to the Secretary of the Interior regarding the benefits that result from U.S. citizens traveling to foreign nations to engage in hunting.

**DATES:** The meeting will be October 16, 2019, from 9 a.m. to 5 p.m. and October 17, 2019, from 1 p.m. to 3 p.m. For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see Public Input under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held at the Main Interior Building, 1849 C Street NW, Washington, DC 20240. Information about reserved meeting rooms will be shared with Security personnel to direct you upon arrival.

**FOR FURTHER INFORMATION CONTACT:** Cade London, Policy Advisor, by email (preferred) at *iwcc@fws.gov;* by telephone at 703–358–2584; by U.S. mail at USFWS—International Affairs, 5275 Leesburg Pike, Falls Church, VA 22041; or via the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2), we, the U.S. Fish and Wildlife Service, announce a public meeting of the International Wildlife Conservation Council (council). The council provides advice and recommendations to the Secretary of the Interior regarding the benefits that result from U.S. citizens traveling to foreign nations to engage in hunting.

## Background

Formed in December 2017, the council is an advisory body whose duties include, but are not limited to:

1. Developing a plan for public engagement and education on the benefits of international hunting.
2. Reviewing and making recommendations for changes, when needed, on all Federal programs and/or regulations, to ensure support of hunting as:
   a. An enhancement to foreign wildlife conservation and survival, and
   b. An effective tool to combat illegal trafficking and poaching.
3. Recommending strategies to benefit the U.S. Fish and Wildlife Service's permit office in receiving timely country data and information so as to remove barriers that impact consulting with range states.
4. Recommending removal of barriers to the importation into the United States of legally hunted wildlife.
5. Ongoing review of import suspension/bans and providing recommendations that seek to resume the legal trade of those items, where appropriate.
6. Reviewing seizure and forfeiture actions/practices, and providing recommendations for regulations that will lead to a reduction of unwarranted actions.
7. Reviewing the Endangered Species Act's foreign listed species and interaction with the Convention on International Trade in Endangered Species of Wild Flora and Fauna, with the goal of eliminating regulatory duplications.
8. Recommending methods for streamlining/expediting processing of import permits.

## Meeting Agenda

The council will convene to hear and discuss the following:

1. Presentations made by conservation experts and officials;
2. Administrative topics; and
3. Public comment, response, and recommendations (if appropriate).

The final agenda will be posted on the internet at *https://www.fws.gov/iwcc.*

**Attendance**

If you plan to attend this meeting, you must register by close of business on the date listed in Public Input. Please submit your name, time of arrival, email address, and phone number to the Policy Advisor for International Affairs (see **FOR FURTHER INFORMATION CONTACT**). Space is limited and requests to attend will be accommodated in the order they are received.

**Public Input**

| If you wish to . . . | You must contact the Policy Advisor for International Affairs (see **FOR FURTHER INFORMATION CONTACT**) no later than . . . |
|---|---|
| Attend the meeting | October 9, 2019. |
| Submit written information before the meeting for the council to consider during the meeting | October 9, 2019. |
| Give an oral presentation during the public comment period | October 9, 2019. |
| Attend the meeting and request reasonable accommodations | October 7, 2019. |

The U.S. Fish and Wildlife Service is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the Policy Advisor for International Affairs (see **FOR FURTHER INFORMATION CONTACT**) in writing (preferably by email) or via the Federal Relay Service at 1–800–877–8339 no later than October 7, 2019.

*Submitting Written Information*

Interested members of the public may submit relevant information for the council to consider during the public meeting. Written statements must be received by the date in the table above so that the information may be made available to the council for consideration prior to the meeting. Submit written statements in the following formats: One hard copy with original signature, and/or one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Public Disclosure 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. 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.

*Giving an Oral Presentation*

Requests to address the council during the public comment period will be accommodated in the order the requests are received. Interested parties must contact the Policy Advisor for International Affairs in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**). Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements up to 30 days after the meeting.

**Meeting Minutes**

Detailed minutes of the meeting will be available for public inspection within 90 days after the meeting. They will be posted on the internet at *http://www.fws.gov/iwcc.*

(Authority: 5 U.S.C. Appendix 2.)

**Ariel Alvarez,**

*Assistant Director, International Affairs.*

[FR Doc. 2019–21310 Filed 9–30–19; 8:45 am]

**BILLING CODE 4333–15–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1012 (Third Review)]**

## Certain Frozen Fish Fillets From Vietnam; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted October 1, 2019. To be assured of consideration, the deadline for responses is October 31, 2019. Comments on the adequacy of responses may be filed with the Commission by December 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On August 12, 2003, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of certain frozen fish fillets from Vietnam (68 FR 47909). Following the first five-year reviews by Commerce and the Commission, effective July 10, 2009, Commerce issued a continuation of the antidumping duty order on imports of certain frozen fish fillets from Vietnam (74 FR 33208). Following the second five-year reviews by Commerce and the Commission, effective November 28, 2014, Commerce issued a continuation of the antidumping duty order on imports of certain frozen fish fillets from Vietnam (79 FR 70853). The

Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Like Product* as frozen catfish fillets, whether plain, breaded, or marinated.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Industry* as processing operations producing frozen catfish fillets (whether plain, breaded, or marinated), not including catfish farming operations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 10, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–441, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours

per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be Provided in Response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to

operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 20, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–20882 Filed 9–30–19; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1176]**

## Certain Semiconductor Devices, Products Containing the Same, and Components Thereof (I); Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 26, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Globalfoundries U.S. Inc. of Santa Clara, California. A supplement to the complaint was filed on September 13, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, products containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,912,603 (''the '603 patent''); U.S. Patent No. 7,750,418 (''the '418 patent''); and U.S. Patent No. 8,936,986 (''the '986 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**SUPPLEMENTARY INFORMATION:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on September 25, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–8, 10–13, and 15–19 of the '603 patent; claims 27–31 of the '418 patent; and claims 1–7, 12–13, and 15–16 of the '986 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''semiconductor devices manufactured at the 28nm, 20nm, 16nm, 12nm, and 7nm process nodes and products containing same, and components thereof, which are field programmable gate arrays (including 3D ICs), adaptive compute acceleration platforms, systems on a chip (including MPSoCs and RFSoCs), modems, televisions, tablets, smart watches, development boards, USB accelerators, test boards, and smartphones'';

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Globalfoundries U.S. Inc., 2600 Great America Way, Santa Clara, CA 95054

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Taiwan Semiconductor Manufacturing Co., Ltd., No. 8, Li-Hsin Rd. VI, Hsinchu 300, Taiwan

TSMC North America, 2851 Junction Avenue, San Jose, California 95134

MediaTek lnc., No. 1 Dusing 1st Rd., Hsinchu Science Park, Hsinchu 20078, Taiwan

MediaTek USA Inc., 2840 Junction Avenue, San Jose, California 95134

Qualcomm Inc., 5775 Morehouse Dr., San Diego, California 92121–1714

Xilinx, Inc., 2100 Logic Dr., San Jose, California 95124

Avnet, Inc., 2211 South 4 7th Street, Phoenix, Arizona 85034

Digi-Key Corporation, 701 Brooks Avenue South, Thief River Falls, Minnesota 56701

Mouser Electronics, Inc., 1000 North Main Street, Mansfield, Texas 76063

TCL Corporation, Floor 22, TCL Technology Building, 17 Huifeng 3rd Rd., Zhongkai Hi-tech Development District, Huizhou, Guangdong 516006, P.R. China

TCL Multimedia Technology Holdings, TCL Multimedia Building, TCL International E City, No. 1001, Zhongshanyuan Road, Nanshan District, Shenzhen, Guangdong Province 518052, P.R. China

Hisense Co. Ltd., Hisense Tower, No. 17 Donghai West Road, South District, Qingdao 266071, P.R. China

Hisense USA Corp., 7310 McGinnis Ferry Road, Suwanee, Georgia 20024

Hisense Import & Export Co. Ltd., Hisense Tower, No. 17 Donghai West Road, South District, Qingdao 266071, P.R. China

Hisense Electric Co., Ltd., 218 Qianwangang Road, Economic Technology Dvpt Zone, Qingdao 266555, P.R. China

Hisense International Co., Ltd., Hisense Tower, No. 17, Donghaixi Road, Qingdao 266071, P.R. China

Hisense Group Co., Ltd., Hisense Tower, No. 17, Donghaixi Road, Qingdao 266071, P.R. China

Qingdao Hisense Communication Co., Ltd., No. 18, Tuanjie Road, Huandao Information, Industry Park, Qingdao, Shandong 260071, P.R. China

Google LLC, 1600 Amphitheatre Parkway, Mountain View, California 94043

Motorola Mobility LLC, 222 West Merchandise Mart Plaza, Chicago, Illinois 60654

BLU Products, 10814 NW 33rd Street, Doral, Florida 33172

OnePlus Technology Co., Ltd., 18F, Block C, Shenye Tairan Building, Tairan Eight Road, Chegongmiao, Futian District, Shenzhen, Guangdong 518048, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 26, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–21300 Filed 9–30–19; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–502 and 731–TA–1227 (Review)]**

## Steel Concrete Reinforcing Bar From Mexico and Turkey; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on steel concrete reinforcing bar (''rebar'') from Mexico and the countervailing duty order on rebar from Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted October 1, 2019. To be assured of consideration, the deadline for responses is October 31, 2019. Comments on the adequacy of responses may be filed with the Commission by December 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** *Background.*—On November 6, 2014, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of rebar from Mexico (79 FR 65925) and a countervailing duty order on imports of rebar from Turkey (79 FR 65926). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within

a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Mexico and Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product.*

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is November 6, 2014.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 10, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–443, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any

interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information to be provided in response to this notice of institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to

attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (*OPTIONAL*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 20, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–20884 Filed 9–30–19; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–1229–1230 (Review)]**

## Monosodium Glutamate From China and Indonesia; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on monosodium glutamate (''MSG'') from China and Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted October 1, 2019. To be assured of consideration, the deadline for responses is October 31, 2019. Comments on the adequacy of responses may be filed with the Commission by December 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 26, 2014, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of MSG from China and Indonesia (79 FR 70505). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all MSG, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to encompass the sole U.S. producer of MSG, namely Ajinomoto North America, Inc.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is November 26, 2014.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons,

or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 10, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–442, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information to be provided in response to this notice of institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of

imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in pounds dry weight MSG and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds dry weight MSG and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds dry weight MSG and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (*OPTIONAL*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 20, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–20883 Filed 9–30–19; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–501 (Review)]**

## Chlorinated Isocyanurates From China; Institution of Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on chlorinated isocyanurates from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted October 1, 2019. To be assured of consideration, the deadline for responses is October 31, 2019. Comments on the adequacy of responses may be filed with the Commission by December 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 13, 2014, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of chlorinated isocyanurates from China (79 FR 67424). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined a single *Domestic Like Product* consisting of all chlorinated isocyanurates, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic integrated producers of chlorinated isocyanurates, as well as all domestic tableters of chlorinated isocyanurates. One Commissioner defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the countervailing duty order under review became effective. In this review, the *Order Date* is November 13, 2014.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices,

and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 10, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–440, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be Provided in Response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (*OPTIONAL*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 20, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–20881 Filed 9–30–19; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Noramco Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 31, 2019. Such persons may also file a written request for a hearing on the application on or before October 31, 2019.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on July 9, 2019, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |
| Nabilone | 7379 | II |
| Phenylacetone | 8501 | II |
| Opium, raw | 9600 | II |
| Poppy Straw Concentrate | 9670 | II |
| Tapentadol | 9780 | II |

The company plans to import phenylacetone (8501), and poppy straw concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: September 23, 2019.

**Thomas W. Prevoznik,**

*Acting Assistant Administrator, Deputy Assistant Administrator.*

[FR Doc. 2019–21320 Filed 9–30–19; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Registration

**ACTION:** Notice of registration.

**SUMMARY:** The registrants listed below have applied for and been granted a registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of a various classes of schedule I and II controlled substances.

**SUPPLEMENTARY INFORMATION:** The companies listed below applied to be registered as a bulk manufacturer of various classes of scheduled I and II controlled substances. Information on a previously published notices is listed below. No comments or objections were submitted for these notices.

| Company | FR docket | Published |
|---|---|---|
| Absolute Standards, Inc | 84 FR 31620 | July 2, 2019. |
| Pisgah Laboratories, Inc | 84 FR 31622 | July 2, 2019. |

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed companies.

Dated: September 24, 2019.

**Thomas W. Prevoznik,**

*Acting Assistant Administrator, Deputy Assistant Administrator.*

[FR Doc. 2019–21312 Filed 9–30–19; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Registration; Siemens Healthcare Diagnostics, Inc.

**ACTION:** Notice of registration.

**SUMMARY:** The registrants listed below have applied for and been granted a registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of various classes of schedule I and II controlled substances.

**SUPPLEMENTARY INFORMATION:** The companies listed below applied to be registered as a bulk manufacturer of a basic class of schedule I and II controlled substances. Information on previously published notices is listed below. No comments or objections were submitted for the notice.

| Company | FR Docket | Published |
|---|---|---|
| Siegfried USA, LLC | 84 FR 7129 | March 1, 2019. |
| Patheon Pharmaceuticals, Inc | 84 FR 8114 | March 6, 2019. |
| S & B Pharma Inc | 84 FR 8116 | March 6, 2019. |
| Siemens Healthcare Diagnostics, Inc | 84 FR 10534 | March 21, 2019. |
| Synthcon, LLC | 84 FR 13962 | April 8, 2019. |

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each of the company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed companies.

Dated: September 23, 2019.

**Thomas W. Prevoznik,**

*Acting Assistant Administrator, Deputy Assistant Administrator.*

[FR Doc. 2019–21313 Filed 9–30–19; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Noramco, Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 31, 2019. Such persons may also file a written request for a hearing on the application on or before October 31, 2019.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on July 18, 2019, Noramco Inc., 1550 Olympic Drive, Athens, Georgia 30601 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Marihuana Extract | 7350 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |
| Nabilone | 7379 | II |
| Phenylacetone | 8501 | II |
| Thebaine | 9333 | II |
| Poppy Straw Concentrate | 9670 | II |
| Tapentadol | 9780 | II |

The company plans to import phenylacetone (8501), and poppy straw concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol (9780) for distribution to its customers.

The company plans to import impurities of buprenorphine that have been determined by DEA to be captured under drug code (9333) thebaine.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: September 23, 2019.

**Thomas W. Prevoznik,**

*Acting Assistant Administrator Deputy Assistant Administrator.*

[FR Doc. 2019–21319 Filed 9–30–19; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Registration

**ACTION:** Notice of registration.

**SUMMARY:** The registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as importers of schedule I and II controlled substances.

**SUPPLEMENTARY INFORMATION:** The companies listed below applied to be registered as an importers of various basic classes of schedule I and II controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for a hearing were submitted for these notices.

| Companies | FR docket | Published |
|---|---|---|
| Restek Corporation | 84 FR 35691 | July 24, 2019. |
| AMRI Rensselaer, Inc | 84 FR 35692 | July 24, 2019. |
| Alcami Carolinas Corporation | 84 FR 36941 | July 30, 2019. |
| Cambrex Charles City | 84 FR 36945 | July 30, 2019. |
| Chattem Chemicals, Inc | 83 FR 39129 | August 8, 2019. |

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable various basic classes of schedule I and II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I and II controlled substances to the above listed companies.

Dated: September 23, 2019

**Thomas W. Prevoznik,**

*Acting Assistant Administrator, Deputy Assistant Administrator.*

[FR Doc. 2019–21321 Filed 9–30–19; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: CreaGen Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 2, 2019.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on August 14, 2019, CreaGen Inc., 299 Washington Street, Unit A, Woburn, Massachusetts 01801–2795 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| 4-Methyl-N-ethylcathinone (4-MEC) | 1249 | I |
| Aminorex | 1585 | I |
| APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide) | 7048 | I |
| JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) | 7118 | I |
| 3,4-Methylenedioxymethamphetamine | 7405 | I |
| 5-Methoxy-N-N-dimethyltryptamine | 7431 | I |
| Alpha-methyltryptamine | 7432 | I |
| N-Benzylpiperazine | 7493 | I |
| 2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine) | 7509 | I |
| 25B-NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine) | 7536 | I |
| alpha-pyrrolidinopentiophenone (α-PVP) | 7545 | I |
| AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)) | 9551 | I |
| Secobarbital | 2315 | II |
| Fentanyl | 9801 | II |

The company plans to synthesize the above controlled substances for distribution to its research and forensic customers.

Dated: September 23, 2019.

**Thomas W. Prevoznik,**

*Acting Assistant Administrator, Deputy Assistant Administrator.*

[FR Doc. 2019–21311 Filed 9–30–19; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 23, 2019, the Department of Justice filed a Complaint and concurrently lodged a proposed Consent Decree to resolve claims by the United States against the Utah Department of Transportation for violations of the Clean Water Act, specifically violations of the terms and conditions of Defendant's National Pollutant Discharge Elimination System Permit issued by the State of Utah under Section 402(b) of the Clean Water Act, 33 U.S.C. 1342(b), for discharges of stormwater from Defendant's municipal separate storm sewer system (''MS4'') throughout the State of Utah. The Complaint alleges that Defendant failed to comply with permit procedures related to wet and dry weather monitoring of its MS4; implement a program to detect and eliminate illicit discharges and improper disposal into the MS4; implement a program to reduce pollutants in construction site stormwater runoff; implement and enforce a program to address post-construction stormwater runoff in new development and redevelopment; and implement an operation and maintenance program to reduce polluted runoff from municipal operations. The proposed Consent Decree addresses the alleged violations by requiring Defendant to update its MS4 plans and operating practices to comply with its permit and to pay a $325,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *the Utah Department of Transportation,* Civil Action No. 2:19–cv–00677, DOJ number 90–5–1–1–11614. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $9.00.

**Jeffrey Sands,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2019–21213 Filed 9–30–19; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 19, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of New York in the lawsuit entitled *United States* v. *Gaetano Associates LP and Charles A. Gaetano Construction Corporation,* Civil Action No. 6:19-cv-01162. In the filed Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that the Defendants are liable under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), for the response costs EPA incurred to respond to the releases and/or threatened releases of hazardous substances into the environment from a parcel of property where the former Charlestown Mall outlet is located in Utica, New York that the Defendants owned and operated. The Consent Decree requires the Defendants to pay $1.85 million in a lump sum to the United States for the settlement of the allegations in the filed Complaint.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Gaetano Associates LP and Charles A. Gaetano Construction Corporation,* D.J. Ref. No. 90–11–3–11061. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.50 (25 cents per page reproduction cost), payable to the United States Treasury.

**Jeffrey Sands,**

*Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 2019–21208 Filed 9–30–19; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2016–0022]**

### Bay Area Compliance Laboratories Corp.: Grant of Expansion of Recognition

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for Bay Area Compliance Laboratories Corp. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*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; email: *robinson.kevin@dol.gov.* OSHA's website includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

**SUPPLEMENTARY INFORMATION:**

#### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Bay Area Compliance Laboratories Corp. (BACL) as a NRTL. BACL's expansion covers the addition of two recognized testing standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

BACL submitted an application, dated December 4, 2017 (OSHA–2016–0022–0006), to expand its scope of recognition to include two additional test standards. OSHA performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing BACL's expansion application in the **Federal Register** on May 15, 2019 (84 FR 21834). The agency requested comments by May 30, 2019, and the agency received one comment (OSHA–2016–0022–0007) about the application. The comment did not require a response from the agency. OSHA now is proceeding with this final notice to grant expansion of BACL's scope of recognition.

To obtain or review copies of all public documents pertaining to BACL's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone: (202) 693–2350. Docket No. OSHA–2016–0022 contains all materials in the record concerning BACL's recognition.

#### II. Final Decision and Order

OSHA staff examined BACL's expansion application and examined other pertinent information. Based on a review of this evidence, OSHA finds that BACL meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant expansion of BACL's scope of recognition. OSHA limits the expansion of BACL's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN BACL'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 61010–1 ..... | Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use: Part 1—General Requirements. |
| UL 62368–1 ..... | Audio/Video, Information and Communication Technology Equipment: Part 1—Safety Requirement. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, BACL must abide by the following conditions of the recognition:

1. BACL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. BACL must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. BACL must continue to meet the requirements for recognition, including all previously published conditions on BACL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of BACL, subject to the limitation and conditions specified above.

## III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 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 25, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–21231 Filed 9–30–19; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0025]**

### Underwriters Laboratories, Inc.: Grant of Expansion of Recognition

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for Underwriters Laboratories, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*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; email: *robinson.kevin@dol.gov.* OSHA's website includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Underwriters Laboratories, Inc. (UL) as a NRTL. UL's expansion covers the addition of three recognized testing standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

UL submitted an application, dated August 24, 2016 (OSHA–2009–0025–0024), to expand recognition to include three additional test standards. This application was revised on July 24, 2018, to note the titles of the standards requested in the original application (OSHA–2009–0025–0025). OSHA staff performed detailed analyses of the application packets and other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing UL's expansion application in the **Federal Register** on April 10, 2019 (84 FR 14402). The agency requested comments by April 25, 2019, and the agency received one comment (OSHA–2009–0025–0028) about the application, but the comment did not require a response from the agency. OSHA now is proceeding with this final notice to grant expansion of UL's scope of recognition.

To obtain or review copies of all public documents pertaining to UL's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 2021; telephone: (202) 693–2350. Docket No. OSHA–2009–0025 contains all materials in the record concerning UL's recognition.

## II. Final Decision and Order

OSHA staff examined UL's expansion application and examined other pertinent information. Based on a review of this evidence, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the limitation and conditions listed below.

OSHA, therefore, is proceeding with this final notice to grant expansion of UL's scope of recognition.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 60079–2 | Standard for Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosure "p". |
| UL 60079–25 | Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems. |
| UL 60079–31 | Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure "t". |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, UL must abide by the following conditions of the recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. UL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. UL must continue to meet the requirements for recognition, including all previously published conditions on UL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of UL, subject to the limitation and conditions specified above.

## III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 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 25, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–21236 Filed 9–30–19; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0042]**

### TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for TUV Rheinland of North America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*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; email: *robinson.kevin@dol.gov.* OSHA's website includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html).*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA) as a NRTL. TUVRNA's expansion covers the addition of three recognized testing standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://*

*www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA submitted an application, dated August 7, 2018 (OSHA–2007–0042–0033), to expand recognition to include the addition of three test standards to the scope of recognition. OSHA staff performed a detailed analysis of the application and other pertinent information but did not perform any onsite reviews in relation to this application.

OSHA published the preliminary notice announcing TUVRNA's expansion application in the **Federal Register** on June 5, 2019 (84 FR 26157). The agency requested comments by June 20, 2019, and the agency received one comment (OSHA–2007–0042–0036) in support of the application, but the comment did not require a response from the agency. OSHA now is proceeding with this final notice to grant expansion of TUVRNA's scope of recognition.

To obtain or review copies of all public documents pertaining to TUVRNA's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone: (202) 698–2350. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA's recognition.

## II. Final Decision and Order

OSHA staff examined TUVRNA's expansion application and examined other pertinent information. Based on a review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the limitation and conditions listed below.

OSHA, therefore, is proceeding with this final notice to grant expansion of TUVRNA's scope of recognition.

OSHA limits the expansion of TUVRNA's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1.

TABLE 1 LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 61010–2–010 | Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials. |
| UL 61010–2–020 | Standard for Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges. |
| UL 61010–2–101 | Safety Requirement for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVRNA must abide by the following conditions of the recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. TUVRNA must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVRNA, subject to the limitation and conditions specified above.

## III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 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 25, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–21235 Filed 9–30–19; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0028]**

### MET Laboratories, Inc.: Grant of Expansion of Recognition

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

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for MET Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (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, phone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web

page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of MET Laboratories, Inc. (MET), as a NRTL. MET's expansion covers the addition of three test standards to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details its scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET submitted three applications, one dated January 10, 2018 (OSHA–2006–0028–0046), one dated May 18, 2018 (OSHA–2006–0028–0044), and another one dated June 28, 2018 (OSHA–2006–0028–0045). The applications expand MET's scope of recognition to include three additional test standards. OSHA staff performed a detailed analysis of the applications and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

OSHA published the preliminary notice announcing MET's expansion applications in the **Federal Register** on June 5, 2019 (84 FR 26159). The agency requested comments by June 20, 2019, and received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of MET's scope of recognition.

To obtain or review copies of all public documents pertaining to the MET's applications, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's recognition.

## II. Final Decision and Order

OSHA examined MET's expansion applications, its capability to meet the requirements of the test standards, and other pertinent information. Based on the review of this evidence, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for expansion of its scope of recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant expansion of MET's scope of recognition. OSHA limits the expansion of MET's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 696 | Electric Toys. |
| UL 962 | Household and Commercial Furnishings. |
| UL 60079–7 | Explosive Atmosphere—Part 7: Equipment Protection by Increased Safety "e". |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, MET must abide by the following conditions of the recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. MET must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of MET, subject to the limitation and conditions specified above.

## III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 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 25, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–21233 Filed 9–30–19; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2010–0016]**

### Derricks; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in its Standard on Derricks.

**DATES:** Comments must be submitted (postmarked, sent, or received) by December 2, 2019.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0016, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2010–0016) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

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

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and incidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining said information (see 29 U.S.C. 657).

The standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among workers by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart must be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations the manufacturer must provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the workers to assure that the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

Paragraph (f)(2)(i)(d) requires that warning or out of order signs must be placed on the derrick hoist while adjustments and repairs are being performed.

Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and to do so at least once a month. In addition, before using rope that has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, workers, and OSHA compliance officers with assurance that the ropes are in good condition. The Standard requires the disclosure of charts and inspection certification records if requested during an OSHA inspection.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

The agency is requesting an adjustment decrease of 19 hours, from 1,355 to 1,336 hours, associated with the information collection requirements in the Standard. This adjustment

decrease is due to the agency's use of a new method for rounding burden hours. The agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Derricks (29 CFR 1910.181).

*OMB Control Number:* 1218–0222.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 500.

*Frequency of Responses:* On occasion.

*Total Responses:* 7,750.

*Average Time per Response:* Varies.

*Estimated Total Burden Hours:* 1,336.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2010–0016) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

## V. Authority and Signature

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

Signed at Washington, DC, on September 25, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–21232 Filed 9–30–19; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2019–0002]**

### Respirable Crystalline Silica Standards for General Industry, Maritime and Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements specified in the Respirable Crystalline Silica Standards for General Industry, Maritime, and Construction.

**DATES:** Comments must be submitted (postmarked, sent, or received) by December 2, 2019.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2019–0002, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2019–0002) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

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

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and

Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

The Respirable Crystalline Silica Standards for general industry and maritime (29 CFR 1910.1053) and construction (29 CFR 1926.1053) contain the following information collection requirements: Conducting worker exposure assessments and notifying workers of the assessment results and any corrective actions being taken; establishing, implementing, reviewing, evaluating, and updating a written exposure control plan and making the plan available to workers and designated representatives; creating and submitting air quality permit notifications; establishing a respiratory protection program; providing qualitative fit-testing and maintaining records; providing medical surveillance to workers; providing the physician or other licensed health care provider (PLHCP), or the specialist, with specific information; ensuring that the PLHCP, or specialist, explains the results of the medical examination to the employee and provides each employee with a copy of their written medical report; obtaining a written medical opinion from the PLHCP, or specialist, and ensuring that each employee receives a copy of the opinion; and making and maintaining air monitoring data, objective data, and medical surveillance records; and providing workers and designated representatives with access to these records. The records are used by workers, employers, and OSHA to determine the effectiveness of the employer's compliance efforts.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Respirable Crystalline Silica Standards for General Industry, Maritime and Construction. The agency requests approval for an adjustment increase of 347,653 burden hours (from 12,118,364 to 12,466,017). The requested adjustment increase is associated with the agency's correction of several administrative errors in the previous ICR. Specifically, the adjustment would include additional burden hours for the development and updating of the written exposure control plan associated with medium-sized general industry establishments. In addition, the adjustment would add additional burden hours for employers to provide information to a physician or other licensed health care professional in association with employee periodic medical examinations. These burden hours were displayed in the previous ICR spreadsheets as costs incurred after the initial year of standard implementation, but were not included in the burden hour totals in the previous ICR. The adjustment also would add additional burden hours for managers to ensure worker receipt of the PLHCP and specialist's written medical report and distribute the PLHCP and specialist's written medical opinion to workers and the employer in association with employee initial, periodic, and additional medical examinations. The request seeks approval to maintain all other previously approved burden hours.

The agency also requests approval to maintain the previously approved operation and maintenance costs of $393,789,901.

*Type of Review:* Extension of a currently approved collection.

*Title:* Respirable Crystalline Silica Standards for General Industry and Maritime (29 CFR 1910.1053) and Construction (29 CFR 1926.1053).

*OMB Control Number:* 1218–0266.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 682,581.

*Frequency:* Biennially, Once, On occasion, Quarterly, Semi-annually, Annually.

*Average Time per Response:* Various.

*Estimated Number of Responses:* 8,170,908.

*Estimated Total Burden Hours:* 12,466,017.

*Estimated Cost (Operation and Maintenance):* $393,789,901.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the agency name and the OSHA docket number (Docket No. OSHA–2019–0002) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350; TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

**V. Authority and Signature**

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

Signed at Washington, DC, on September 25, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–21234 Filed 9–30–19; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2019–008]**

### Renewal of State, Local, Tribal, and Private Sector Policy Advisory Committee

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of Federal Advisory Committee charter renewal.

**SUMMARY:** NARA has renewed the charter for its State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC). The General Services Administration included the SLTPS–PAC in NARA's ceiling of approved Federal advisory committees.

**DATES:** The charter will run for two years, until December 15, 2020.

**ADDRESSES:** NARA staff supporting the Committee are located at National Archives and Records Administration; 700 Pennsylvania Avenue, NW; Information Security Oversight Office; Washington, DC 20408.

**FOR FURTHER INFORMATION CONTACT:** Miranda Andreacchio, NARA Committee Management Officer, by telephone at 202–357–7467.

**SUPPLEMENTARY INFORMATION:** NARA determined that renewing the SLTPS–PAC was in the public interest due to the expertise and valuable advice the Committee members provide. NARA will use the Committee's recommendations on issues related to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities.

NARA renewed the charter in accordance with provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.). GSA approved the SLTPS–PAC in accordance with Executive Order 13549.

**David S. Ferriero,**

*Archivist of the United States.*

[FR Doc. 2019–21230 Filed 9–30–19; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–409 and 72–046; EA–19–077; NRC–2019–0110]**

### In the Matter of Dairyland Power Cooperative; La Crosse Boiling Water Reactor

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Direct transfer of license; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the direct transfer of Possession Only License No. DPR–45 for the La Crosse Boiling Water Reactor (LACBWR), with respect to NRC-licensed possession, maintenance, and decommissioning authorities, from the current holder, LaCrosse*Solutions,* LLC (LS), to Dairyland Power Cooperative (DPC), which held these authorities prior to transferring them to LS on June 1, 2016, and which is currently the licensed owner of LACBWR. The NRC is also amending the facility operating license for administrative purposes to reflect the license transfer from LS to DPC. The NRC determined that DPC is qualified to be the holder of the license and that the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The Order approving the transfer of the LACBWR license to DPC became effective on September 24, 2019.

**DATES:** The Order was issued on September 24, 2019, and is effective for one year.

**ADDRESSES:** Please refer to Docket ID NRC–2019–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0110. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The license transfer Order, the NRC safety evaluation supporting the staff's findings, and the conforming license amendment are available in ADAMS under Accession Nos. ML19008A396, ML19008A397, and ML19008A394, respectively.
- *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:** Marlayna Vaaler Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178; email: *marlayna.doell@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated at Rockville, Maryland, this 26th day of September, 2019.

For the Nuclear Regulatory Commission.

**John W. Lubinski,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment—Order Approving the Transfer of License and Conforming Amendment**

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

*In the Matter of* LaCrosse*Solutions,* LLC, La Crosse Boiling Water Reactor EA–19–077

Docket Nos.: 50–409 and 72–046

License No.: DPR–45

**ORDER APPROVING THE TRANSFER OF LICENSE AND CONFORMING AMENDMENT**

**I.**

LaCrosse*Solutions,* LLC (LS) is the holder of Possession Only License No. DPR–45, with respect to the possession, maintenance, and decommissioning of the La Crosse Boiling Water Reactor (LACBWR). LACBWR was an Atomic Energy Commission (AEC) Demonstration Project Reactor that first achieved criticality in 1967, that commenced commercial operation in

November 1969, and that was capable of producing 50 megawatts of electricity. LACBWR is located on the east bank of the Mississippi River in Vernon County, Wisconsin, about 1 mile south of the Village of Genoa, Wisconsin, and approximately 19 miles south of the city of La Crosse, Wisconsin, and is co-located with the Genoa Generating Station (Genoa 3), which is a coal-fired power plant that is still in operation. The Allis-Chalmers Company was the original licensee of LACBWR; the AEC later sold the plant to the Dairyland Power Cooperative (DPC) and granted it Provisional Operating License No. DPR–45 on August 28, 1973.

LACBWR permanently ceased operations on April 30, 1987. DPC applied to amend the LACBWR license to a possession-only license on May 22, 1987, and completed reactor defueling on June 11, 1987. In a letter dated August 4, 1987, the NRC terminated DPC's authority to operate LACBWR and granted the licensee possess-but-not-operate status. By letter dated August 18, 1988, the NRC amended DPC's license to reflect the permanently defueled configuration at LACBWR.

The NRC issued an order authorizing the decommissioning of LACBWR and approving the licensee's proposed Decommissioning Plan (DP) on August 7, 1991. Because the NRC approved DPC's DP before August 28, 1996 (the effective date of an NRC final rule concerning power reactor decommissioning (61 FR 39278; July 29, 1996)), the DP is considered the Post-Shutdown Decommissioning Activities Report (PSDAR) for LACBWR. The PSDAR public meeting was held on May 13, 1998, and subsequent updates to the LACBWR decommissioning report have combined the DP and PSDAR into the ''LACBWR Decommissioning Plan and Post-Shutdown Decommissioning Activities Report.'' DPC constructed an onsite Independent Spent Fuel Storage Installation (ISFSI) and completed the movement of all 333 spent nuclear fuel elements from the Fuel Element Storage Well to dry cask storage at the ISFSI by September 19, 2012.

By order dated May 20, 2016, the NRC approved the direct transfer of Possession Only License No. DPR–45 for LACBWR from DPC to LS, a wholly-owned subsidiary of Energy*Solutions,* LLC, which was created for the sole purpose of completing the dismantlement and remediation activities at the LACBWR site. The order was published in the **Federal Register** on June 2, 2016 (81 FR 35383). The transfer assigned DPC's NRC-licensed possession, maintenance, and decommissioning authorities for LACBWR to LS in order to implement expedited decommissioning at the LACBWR site. Final decommissioning activities at LACBWR are scheduled to be completed in 2019 and the LACBWR License Termination Plan (LTP) was approved by the NRC on May 21, 2019.

**II.**

By letter dated June 27, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18184A444), as supplemented by letter dated December 3, 2018 (ADAMS Accession No. ML18341A138), LS and DPC (collectively, the applicants) submitted an application, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Section 50.80, ''Transfer of licenses,'' of Title 10 of the *Code of Federal Regulations* (10 CFR), requesting NRC consent for the direct transfer of LS's Possession Only License No. DPR–45 for LACBWR to DPC. Specifically, LS intends to transfer its NRC-licensed possession, maintenance, and decommissioning authorities back to DPC upon the completion of decommissioning activities at the LACBWR site.

DPC is currently the licensed owner of LACBWR; it holds title to and ownership of the real estate encompassing most of the LACBWR site, as well as lease hold interests for the remaining portions of the site; title to and ownership of the spent nuclear fuel; and title to and ownership of all improvements at the LACBWR site. LS currently maintains a lease for the above-ground LACBWR structures (other than the LACBWR ISFSI) and previously assumed responsibility for all NRC-licensed activities at the LACBWR site, including responsibility under the license to complete decommissioning. LS will relinquish any remaining lease rights it holds at the site upon the completion of decommissioning.

Upon the execution of the license transfer, DPC will maintain the onsite ISFSI and the ultimate disposition of the spent nuclear fuel will be provided for under the terms of DPC's Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste with the U.S. Department of Energy. DPC will also continue to maintain its nuclear decommissioning trust, an external trust in which funds are segregated from its assets and outside its administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1).

The application also requested approval of a conforming amendment to the license pursuant to 10 CFR 50.80 and 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit.'' No physical or operational changes to the facility were requested beyond those encompassed in the LACBWR PSDAR and LTP. Notice of the application was published in the **Federal Register** on October 11, 2018 (83 FR 51509). The supplemental letter dated December 3, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's no significant hazards consideration determination. No requests for hearing or comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that DPC is qualified to be the holder of the license and that the transfer of the license to DPC, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming amendment to the LACBWR license to reflect the transfer to DPC, the NRC staff determined the following:

(1) The application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I.

(2) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations.

(3) The issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public.

(4) The issuance of the proposed license amendment is in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' of the Commission's

regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated September 24, 2019, which is available at ADAMS Accession No. ML19008A397.

**III.**

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the license, as described herein, to DPC is approved, subject to the following condition:

Prior to the closing of the license transfer from LS to DPC, DPC shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) at the NRC that it has obtained or continues to possess the appropriate amount of insurance required of a licensee under 10 CFR 140.12 and 10 CFR 50.54(w) of the Commission's regulations, consistent with the exemptions issued to LACBWR on June 26, 1986, and July 24, 2018.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer is completed.

*It is further ordered* that, after receipt of all required regulatory approvals of the proposed direct license transfer, DPC shall inform the Director of NMSS in writing of such receipt, and of the date of closing of the transfer, no later than 2 business days prior to the date of closing of the direct license transfer. Should the proposed direct license transfer not be completed within 1 year of this Order's date of issuance, this Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order. This Order is effective upon issuance.

For further details with respect to this Order, see the application dated June 27, 2018, as supplemented by letter dated December 3, 2018, and the associated NRC safety evaluation dated September 24, 2019, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who encounter problems with ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 24th day of September 2019.

For The Nuclear Regulatory Commission.

John W. Lubinski,

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2019–21303 Filed 9–30–19; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2019–204 and CP2019–226; MC2019–205 and CP2019–227; MC2019–206 and CP2019–228]**

## 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:* October 3, 2019.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–204 and CP2019–226; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 99 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 25, 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:* October 3, 2019.

2. *Docket No(s).:* MC2019–205 and CP2019–227; *Filing Title:* USPS Request to Add Priority Mail Contract 552 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 25, 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:* October 3, 2019.

3. *Docket No(s).:* MC2019–206 and CP2019–228; *Filing Title:* USPS Request to Add First-Class Package Service Contract 104 to Competitive Product

[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).

List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 25, 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:* October 3, 2019.

This Notice will be published in the **Federal Register**.

**Darcie S. Tokioka,**

*Acting Secretary.*

[FR Doc. 2019–21252 Filed 9–30–19; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87107; File No. SR–CBOE–2019–044]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Adopt Rule 6.49B, Off-Floor RWA Transfers

September 25, 2019.

### I. Introduction

On August 6, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to adopt Cboe Rule 6.49B to add an exception to the general prohibition against off-floor position transfers. The proposed rule change was published for comment in the **Federal Register** on August 14, 2019.[3] The Commission received two comment letters on the proposal.[4] This order approves the proposed rule change.

### II. Description of the Proposed Rule Change

Cboe Rule 6.49(a) generally requires transactions of option contracts listed on the Exchange for a premium in excess of $1.00 to be effected on the Exchange or on another exchange. Notwithstanding the prohibition set forth in Rule 6.49(a), Cboe Rule 6.49A(a) specifies several circumstances under which Trading Permit Holders (''TPHs'') may effect transfers of positions off exchange.

The Exchange proposes to adopt new Cboe Rule 6.49B to add an additional exception to the prohibition in Rule 6.49(a). Rule 6.49B provides that notwithstanding Rule 6.49, existing positions in options of a TPH or non-TPH (including an affiliate of a TPH) that are listed on the Exchange may be transferred on, from, or to the books of a Clearing Trading Permit Holder off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer'').[5]

An RWA transfer could not result in a change in ownership, as it must occur between accounts of the same Person.[6] Further, RWA Transfers may occur on a routine, recurring basis [7] and may result in the netting of positions.[8] However, RWA Transfers may not result in preferential margin or haircut treatment.[9]

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act,[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that two comment letters received from options market makers support the proposal.[13] One believed that the proposed rule will allow for ''[m]ore efficient capital management'' that would facilitate the ability of options market makers ''to provide additional liquidity in the listed options market.'' [14]

The Commission believes that proposed Rule 6.49B should provide market makers with the flexibility to reduce RWA exposure by moving their positions between accounts.[15] To the extent they do so and are able to net positions as a result, it should facilitate the ability of Clearing Trading Permit Holders to provide capital to clear trades, which should facilitate liquidity provision in support of fair and orderly markets and to the benefit of investors.[16]

### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2019–044) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–21244 Filed 9–30–19; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86603 (August 8, 2019), 84 FR 40460 (''Notice'').

[4] *See* Letters from Andrew Stevens, General Counsel, IMC Chicago, LLC, to Vanessa Countryman, Secretary, Commission, dated September 4, 2019, *available at https://www.sec.gov/comments/sr-cboe-2019-044/srcboe2019044-6072179-191467.pdf* (''IMC Letter''), and Gerald D. O'Connell, Compliance Coordinator, Susquehanna International Group, LLP (''SIG''), to Brent J. Fields, Secretary, Commission, dated August 19, 2019, *available at https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-5985436-190350.pdf* (''SIG Letter'').

[5] *See* proposed Rule 6.49B.

[6] *See* proposed Rule 6.49B(e). Cboe Rule 1.1 defines ''Person'' as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. The Exchange represents that any RWA Transfers will be subject to all applicable recordkeeping requirements applicable to TPHs and Clearing Trading Permit Holders under the Act. *See* Notice, *supra* note 3, at 40463 n.24.

[7] *See* proposed Rule 6.49B(b).

[8] *See* proposed Rule 6.49B(c).

[9] *See* proposed Rule 6.49B(d).

[10] 15 U.S.C. 78f.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 4. One commenter noted that the proposal ''provides proper justifications for fewer restrictions'' on transfers involving no material change of beneficial ownership. *See* SIG Letter, *supra* note 4, at 2. The other commenter stated that permitting RWA Transfers ''allows options market makers to recognize, in a more economically rational way, the risk reducing benefits of a balanced derivative portfolio—to the benefit of investors generally.'' *See* IMC Letter, *supra* note 4, at 2.

[14] *See* IMC Letter, *supra* note 4, at 2.

[15] *See, e.g.,* Notice, supra note 3, at 40462 (''These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.''). The Exchange also compared Rule 6.49B as having a ''similar result as changing a give up or CMTA . . . just at a different time.'' *See id.*

[16] The Commission notes that, as is true for all other off-floor transfers permitted under Rule 6.49A, RWA Transfers may not result in preferential margin or haircut treatment. *See* proposed Rule 6.49B(d).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87109; File No. SR–Phlx–2019–36]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule, at Equity 7, Section 3

September 25, 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 13, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 3, as described further below.

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

Presently, the Exchange has a pricing schedule, at Equity 7, Section 3, which sets forth several different fees that it charges for orders in securities priced at $1 or more per share that remove liquidity from the Exchange and several different credits that it providers for orders in such securities that add liquidity on the Exchange. The Exchange recently amended this pricing schedule to increase removal activity on the Exchange and to improve overall market quality.[3] Currently, the Exchange provides the following schedule of credits for displayed orders/quotes that provide liquidity to the Exchange:

- $0.0026 per share executed credit for quotes/orders entered by member organizations that provide 0.15% or more of total Consolidated Volume during a month;
- $0.0024 per share executed credit for quotes/orders entered by member organizations that provide 0.07% or more of total Consolidated Volume during a month; and
- $0.0023 per share executed credit for all other quotes/orders.

The Exchange now proposes to reduce its $0.0023 per share executed credit for all other displayed quotes/orders to $0.0020 per share executed. The Exchange proposes this change to further offset the costs of its recent reductions to its transaction fees, as set forth in SR–Phlx–2019–35, which the Exchange intends to incentivize increased liquidity removal activity on the Exchange, and to further improve overall market quality. Nasdaq [sic] notes that it mistakenly omitted this change when it filed SR–Phlx–2019–35, and wishes to correct that omission going forward.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange's proposed change to its credit for all other displayed orders/quotes is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[8]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[9] Within the foregoing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–Phlx–2019–35.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] *See* Cboe EDGX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[9] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that such shifts in liquidity and market share occur within the context

context, the proposal represents a reasonable attempt by the Exchange to further offset the costs of its recent action [10] to improve market quality and increase its market share relative to its competitors.

Generally, the Exchange's schedule of credits and charges in Equity 7, Section 3, as recently amended by SR–Phlx–2019–35, is intended to provide strong incentives to member organizations to increase their liquidity removal activity on the Exchange, and to do so broadly in orders in securities in all Tapes. The Exchange believes that an increase in overall liquidity removal activity on the Exchange will, in turn, improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants. The proposal to reduce the Exchange's credit for all other displayed orders/quotes is an effort to help offset the costs of its recent reductions in transaction fees for removing liquidity from the Exchange. Even as lowered, the proposed amended credit will be comparable to, if not favorable to, those that its competitors provide.[11]

The Proposal Is an Equitable Allocation of Credits and Charges

The Exchange believes its proposal will allocate its proposed credits fairly among its market participants. The Exchange believes that it is equitable to offset the costs of its recent proposal to charge lower fees for liquidity removal [12] by lowering its corresponding credits for liquidity provision to the Exchange. Although the proposed amended credit will be lower than the existing credit, the Exchange believes that the proposed credit will continue to be comparable to liquidity adding rebates provided by its competitors.[13] That said, the Exchange again notes that those participants that do not wish to receive the lower credit are free to shift their order flow to competing venues that offer them higher credits.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for the proposal to offset its costs of improving market quality for all members on the Exchange. Although net adders of liquidity will bear the burden of the lower credit, this result is fair insofar as increased liquidity removal activity that the lower credit facilitates will help to improve overall market quality and the attractiveness of the Exchange's equity market to all existing and prospective participants.

*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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange—and even those that receive the lower proposed credit—will benefit from an increase in the removal of liquidity by those that choose to meet the tier qualification criteria. Moreover, members are free to trade on other venues to the extent they believe that the credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended credit is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 37% of industry volume for the month of July 2019.

In sum, the Exchange intends for the proposed amended credit to support increases in member incentives to remove liquidity from the Exchange and to contribute to market quality, which is reflective of fierce competition for order flow noted above; however, if the proposed amended credit is unattractive to market participants, it is likely that the Exchange will either fail to increase its market share or even lose market share as a result. Accordingly, the Exchange does not believe that the proposed amended credit will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*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.

of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[10] *See* SR–Phlx–2019–35.

[11] *See* n. 8, *supra.*

[12] *See* SR–Phlx–2019–35.

[13] *See* n. 8, *supra.*

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–36 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–2019–36. 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–2019–36 and should be submitted on or before October 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–21242 Filed 9–30–19; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–87108; File No. SR–CboeBZX–2019–067]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to List and Trade Shares of the Innovator-100 Buffer ETF Series, Innovator Russell 2000 Buffer ETF Series, Innovator-100 Power Buffer ETF Series, Innovator Russell 2000 Power Buffer ETF Series, Innovator-100 Ultra Buffer ETF Series, and Innovator Russell 2000 Ultra Buffer ETF Series Under Rule 14.11(i)

September 25, 2019.

### I. Introduction

On July 18, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares (''Shares'') of the Innovator-100 Buffer ETF Series and Innovator Russell 2000 Buffer ETF Series (collectively, the ''Buffer Funds''), Innovator-100 Power Buffer ETF Series and Innovator Russell 2000 Power Buffer ETF Series (collectively, the ''Power Buffer Funds''), and Innovator-100 Ultra Buffer ETF Series and Innovator Russell 2000 Ultra Buffer ETF Series (collectively, the ''Ultra Buffer Funds,'' and together with the Buffer Funds and Power Buffer Funds, the ''Funds'') under BZX Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on August 5, 2019.[3] On August 29, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On September 17, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On September 19, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 1.[5] On September 24, 2019, the Exchange filed partial Amendment No. 3 to the proposed rule change.[6] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 2 and 3.

### II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. In total, the Exchange is proposing to list and trade Shares of up to twelve monthly series of each of the Funds. The Shares will be offered by Innovator ETFs Trust (''Trust''), a Delaware statutory trust.[7] The

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86511 (July 30, 2019), 84 FR 38078.

[4] *See* Securities Exchange Act Release No. 86996, 84 FR 49779 (September 23, 2019) (extending the time period to November 3, 2019).

[5] In Amendment No. 2, the Exchange: (1) Deleted its representation about the index provider implementing and maintaining a firewall; (2) modified the downside protection in the Buffer Funds from 10% to 9%; (3) clarified descriptions about the investment methodology of the Funds; (4) modified descriptive terms on the liquidity and competitive market for options on the reference indexes; (5) identified options exchanges trading standardized and FLexible EXchange Options (''FLEX Options'') on the reference indexes (6) updated volume information on standardized options in the reference indexes; and (7) made other technical, non-substantive changes.

[6] The amendments to the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2019-067/srcboebzx2019067.htm.* In partial Amendment No. 3, the Exchange clarified a description related to the Buffer Funds. Because Amendment Nos. 2 and 3 do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment Nos. 2 and 3 are not subject to notice and comment.

[7] The Trust is registered with the Commission as an investment company and has filed a registration statement for each Fund with the Commission on

investment adviser to the Funds is Innovator Capital Management, LLC (''Adviser''), and the sub-adviser to the Funds is Milliman Financial Risk Management LLC (''Sub-Adviser'').

The investment objective of the Funds is to provide investors with returns that match those of the Nasdaq-100 Index (the ''Nasdaq-100 Price Index'') or the Russell 2000 Price Index (the ''Russell 2000 Price Index'') (collectively, the ''Reference Indexes'') over a period of approximately one year, while providing a level of protection from losses in the applicable Reference Index.

*A. Buffer Funds*

The Buffer Funds are actively managed funds that seek to provide investment returns that match the gains of the applicable Reference Index, up to a maximized annual return (the ''Buffer Cap Level''),[8] while guarding against a decline in the Reference Index for the first 9%. Specifically, the Buffer Fund is designed to provide the following results during the outcome period:

• *If the Reference Index appreciates over the outcome period:* The Buffer Fund is designed to provide a total return that matches the total return of the applicable Reference Index, up to the applicable Buffer Cap Level;

• *If the Reference Index decreases over the outcome period by 9% or less:* The Buffer Fund is designed to provide a total return of zero; and

• *If the Reference Index depreciates over the outcome period by greater than 9%:* The Buffer Fund is designed to provide a total return loss that is 9% less than the percentage loss on the Reference Index with a maximum loss of approximately 91%.[9]

The Buffer Fund is designed to produce these outcomes by including theoretically ''purchased'' and ''written'' FLEX Options that, when layered upon each other, are designed to buffer against losses of the applicable Reference Index and cap the level of possible gains.

Under Normal Market Conditions,[10] each Buffer Fund will attempt to achieve its investment objective by taking positions that provide performance exposure that match the gains of the applicable Reference Index. Each Buffer Fund will invest primarily in exchange-traded options contracts that reference either the Reference Index or exchange traded funds (''ETFs'') that track the Reference Index.[11] Any FLEX Options written by a Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Buffer Fund to create the right to buy or sell the same asset such that the Buffer Fund will always be in a net long position. As the FLEX Options mature at the end of each outcome period, they are replaced.

*B. Power Buffer Funds*

The Power Buffer Funds are actively managed funds that seek to provide investment returns that match the gains of the applicable Reference Index, up to a maximized annual return (the ''Power Buffer Cap Level''),[12] while guarding against a decline in the Reference Index for the first 15%. Specifically, the Power Buffer Fund is designed to provide the following results during the outcome period:

• *If the Reference Index appreciates over the outcome period:* The Power Buffer Fund is designed to provide a total return that matches the total return of the applicable Reference Index, up to the applicable Power Buffer Cap Level;

• *If the Reference Index decreases over the outcome period by 15% or less:* The Power Buffer Fund is designed to provide a total return of zero; and

• *If the Reference Index depreciates over the outcome period by greater than 15%:* The Power Buffer Fund is designed to provide a total return loss that is 15% less than the percentage loss on the Reference Index with a maximum loss of approximately 85%.[13]

The Power Buffer Fund is designed to produce these outcomes by including theoretically ''purchased'' and ''written'' FLEX Options that, when layered upon each other, are designed to buffer against losses of the applicable Reference Index and cap the level of possible gains.

Under Normal Market Conditions, each Power Buffer Fund will attempt to achieve its investment objective by taking positions that provide performance exposure that match the gains of the applicable Reference Index. Each Power Buffer Fund will invest primarily in exchange-traded options contracts that reference either the Reference Index or ETFs that track the Reference Index.[14] Any FLEX Options written by a Power Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Power Buffer Fund to create the right to buy or sell the same asset such that the Power Buffer Fund will always be in a net long position. As the FLEX Options mature at the end of each outcome period, they are replaced.

*C. Ultra Buffer Funds*

The Ultra Buffer Funds are actively managed funds that seek to provide investment returns that match the gains of the applicable Reference Index, up to a maximized annual return (the ''Ultra Buffer Cap Level''),[15] while guarding against a decline in the Reference Index of between 5% and 35%. Specifically, the Ultra Buffer Fund is designed to provide the following results during the outcome period:

• *If the Reference Index appreciates over the outcome period:* The Ultra Buffer Fund is designed to provide a total return that matches the total return of the applicable Reference Index, up to the applicable Ultra Buffer Cap Level;

• *If the Reference Index decreases over the outcome period by 5% or less:* The Ultra Buffer Fund is designed to provide a total return loss that is equal

Form N–1A (File Nos. 333–146827 and 811–22135) (''Registration Statement'') under the Securities Act of 1933 (15 U.S.C. 77a), dated February 6, 2019. According to the Exchange, the description of the operation of the Funds and the Shares herein is based, in part, on the Registration Statement.

[8] The Exchange states that the Buffer Cap Level will be determined with respect to each Buffer Fund on the inception date of the Buffer Fund and at the beginning of each outcome period. *See* Amendment No. 2, *supra* note 5, at 10–11.

[9] The Exchange states that the Buffer Funds do not offer any protection against declines in the Reference Index exceeding 9% on an annualized basis. *See id.* at 10. Shareholders will bear all Reference Index losses exceeding 9% on a one-to-one basis. *See id.*

[10] As defined in BZX Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[11] The FLEX Options owned by each of the Buffer Funds will have the same terms (*i.e.,* same strike price and expiration) for all investors of a Buffer Fund within an outcome period. *See* Amendment No. 2, *supra* note 5, at 10.

[12] The Exchange states that the Power Buffer Cap Level will be determined with respect to each Power Buffer Fund on the inception date of the Power Buffer Fund and at the beginning of each outcome period. *See* Amendment No. 2, *supra* note 5, at 12–13.

[13] The Exchange states that the Power Buffer Funds do not offer any protection against declines in the Reference Index exceeding 15% on an annualized basis. *See id.* at 12. Shareholders will bear all Reference Index losses exceeding 15% on a one-to-one basis. *See id.*

[14] The FLEX Options owned by each of the Power Buffer Funds will have the same terms (*i.e.,* same strike price and expiration) for all investors of a Power Buffer Fund within an outcome period. *See id.*

[15] The Exchange states that the Ultra Buffer Cap Level will be determined with respect to each Ultra Buffer Fund on the inception date of the Ultra Buffer Fund and at the beginning of each outcome period. *See* Amendment No. 2, *supra* note 5, at 12–13.

to the percentage loss on the Reference Index;

• *If the Reference Index depreciates over the outcome period by 5%–35%:* The Ultra Buffer Fund is designed to provide a total return loss of 5%; and

• *If the Reference Index depreciates over the outcome period by more than 35%:* The Ultra Buffer Fund is designed to provide a total return loss that is 30% less than the percentage loss on the Reference Index with a maximum loss of approximately 70%.[16]

The Ultra Buffer Fund is designed to produce these outcomes by including theoretically ''purchased'' and ''written'' FLEX Options that, when layered upon each other, are designed to buffer against losses of the applicable Reference Index and cap the level of possible gains.

Under Normal Market Conditions, each Ultra Buffer Fund will attempt to achieve its investment objective by taking positions that provide performance exposure that match the gains of the applicable Reference Index. Each Ultra Buffer Fund will invest primarily in exchange-traded options contracts that reference either the Reference Index or ETFs that track the Reference Index.[17] Any FLEX Options written by a Ultra Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Ultra Buffer Fund to create the right to buy or sell the same asset such that the Ultra Buffer Fund will always be in a net long position. As the FLEX Options mature at the end of each outcome period, they are replaced.

*D. Investment Methodology for the Funds*

As mentioned above, under Normal Market Conditions, each Fund would seek to achieve its respective investment objective by investing primarily in exchange-traded options contracts that reference either the Reference Index or ETFs that track the Reference Index. Each of the Funds might invest its net assets (in the aggregate) in other investments which the Adviser or Sub-Adviser believes would help each Fund meet its investment objective and that would be disclosed at the end of each trading day (''Other Assets'').[18]

**III. Discussion and Commission Findings**

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be 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. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

According to the Exchange, quotation and last-sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority.[22] RFQ information for FLEX Options will be available directly from the applicable options exchange. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services.[23] In addition, price information about cash equivalents will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.[24]

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under BZX Rule 14.11(i)(4)(B)(iv), if the Exchange becomes aware that the Net Asset Value (''NAV'') or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange is required to halt trading in such series of Managed Fund Shares. In addition, the Exchange represents that if the Funds or the Shares are not in compliance with the applicable listing requirements for Managed Funds Shares under BZX Rule 14.11(i), the Exchange will commence delisting procedures under BZX Rule 14.12 (Failure to Meet Listing Standards).[25] The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[26] Further, the Trust has represented that it will provide and maintain a publicly available tool on its website that will provide existing and prospective Fund shareholders with certain information for each of the Funds including, among other things, current NAV, start and end dates of the current outcome period, and the remaining buffer available for a shareholder purchasing Shares at the current NAV or the amount of losses that a shareholder purchasing Shares at the current NAV would incur before benefitting from the protection of the buffer.[27]

The Shares do not qualify for generic listing because the Funds will not satisfy the requirement of BZX Rule 14.11(i)(4)(C)(iv)(b) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of

[16] The Exchange states that the Ultra Buffer Funds do not offer any protection against declines in the Reference Index exceeding 35% on an annualized basis. *See id.* at 14. Shareholders will bear all Reference Index losses exceeding 35% on a one-to-one basis. *See id.*

[17] The FLEX Options owned by each of the Ultra Buffer Funds will have the same terms (*i.e.,* same strike price and expiration) for all investors of an Ultra Buffer Fund within an outcome period. *See id.* at 15.

[18] Other Assets include only cash or cash equivalents, as defined in BZX Rule 14.11(i)(4)(C)(iii), and standardized options contracts listed on a U.S. securities exchange that reference either the Reference Index or that reference ETFs that track the Reference Index (''Reference ETFs''). As defined in BZX Rule 14.11(i)(4)(C)(iii), cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] *See* Amendment No. 2, *supra* note 5, at 21.

[23] *See id.*

[24] *See id.*

[25] *See id.* at 25.

[26] *See id.*

[27] *See id.* at 22.

the weight of the portfolio and the aggregate gross notional value of listed derivatives based on any single underlying reference asset not exceed 30% of the weight of the portfolio (including gross notional exposures). Instead, the Funds will hold listed derivatives primarily on a single reference asset, the Nasdaq-100 Index or the Russell 2000 Price Index.[28] Despite the exposure of the listed derivatives to a single reference asset, the Commission nevertheless believes that certain representations by the Exchange help to mitigate concerns about the prices of the Shares being susceptible to manipulation. Specifically, the Exchange represents that the market for options contracts for each Reference Index are liquid and derive their value from actively traded Reference Index components. Additionally, all of the options held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[29]

Additionally, in support of this proposal, the Exchange represents that:

(1) The Funds and the Shares will satisfy all of the requirements applicable to Managed Fund Shares under BZX Rule 14.11(i), as well as the Generic Listing Standards other than BZX Rule 14.11(i)(4)(C)(iv)(b).

(2) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

(3) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.[30]

(4) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.[31]

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment Nos. 2 and 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3 thereto, is consistent with Section 6(b)(5) of the Act[32] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–CboeBZX–2019–067), as modified by Amendment Nos. 2 and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–21246 Filed 9–30–19; 8:45 am]

**BILLING CODE 8011–01–P**

[28] The Funds also may invest in options overlying Reference ETFs. *See id.* at 15. The Exchange states that each of the applicable Reference Indexes meet the generic listing standards applicable to indexes underlying series of Index Fund Shares listed on the Exchange, which include diversity, liquidity, and market cap requirements that are designed to ensure that an underlying index is not susceptible to manipulation. *See id.* at 17, n.14.

[29] For a list of the current members of ISG, *see www.isgportal.org.*

[30] 17 CFR 240.10A–3.

[31] *See* Amendment No. 2, *supra* note 5, at 20.

[32] 15 U.S.C. 78f(b)(5).

[33] *Id.*

[34] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 16137 and # 16138; Michigan Disaster Number MI–00072]**

### Administrative Declaration of a Disaster for the State of Michigan

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 09/25/2019.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 04/30/2019 through 05/01/2019.

**DATES:** Issued on 09/25/2019.

*Physical Loan Application Deadline Date:* 11/25/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/25/2020.

**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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Wayne.

*Contiguous Counties:*

Michigan: Macomb, Monroe, Oakland, Washtenaw.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | ..... |
| Homeowners with Credit Available Elsewhere | 3.875 |
| Homeowners without Credit Available Elsewhere | 1.938 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |
| For Economic Injury: | ..... |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 16137 6 and for economic injury is 16138 0.

The State which received an EIDL Declaration # is Michigan.

(Catalog of Federal Domestic Assistance Number 59008)

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–21212 Filed 9–30–19; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF STATE

**[Public Notice: 10912]**

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Julie Mehretu" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Julie Mehretu,'' 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 Los Angeles County Museum of Art, Los Angeles, California, from on or about November 3, 2019, until on or about May 17, 2020; at the Whitney Museum of American Art, New

York, New York, from on or about June 26, 2020, until on or about September 20, 2020; at the High Museum of Art, Atlanta, Georgia, from on or about October 24, 2020, until on or about January 31, 2021; at the Walker Art Center, Minneapolis, Minnesota, from on or about March 14, 2021, until on or about July 11, 2021; 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:** Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Matthew R. Lussenhop,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2019–21216 Filed 9–30–19; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 10913]**

### Notice of Determinations; Culturally Significant Object Imported for Exhibition—Determinations: "Edward Hopper and the American Hotel" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that a certain object to be exhibited in the exhibition ''Edward Hopper and the American Hotel,'' 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 Virginia Museum of Fine Arts, Richmond, Virginia, from on or about October 26, 2019, until on or about February 23, 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.

**Matthew R. Lussenhop,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2019–21217 Filed 9–30–19; 8:45 am]

**BILLING CODE 4710–05–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. EP 526 (Sub-No. 13)]**

### Notice of Railroad-Shipper Transportation Advisory Council Vacancies

**AGENCY:** Surface Transportation Board (Board).

**ACTION:** Notice of upcoming vacancies on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

**SUMMARY:** The Board hereby gives notice of upcoming vacancies on RSTAC for two large shipper representatives. The Board seeks suggestions for candidates to fill these vacancies.

**DATES:** Nominations are due on October 31, 2019.

**ADDRESSES:** Suggestions may be submitted either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 526 (Sub-No. 13), 395 E Street SW, Washington, DC 20423–0001. Submissions will be posted to the Board's website at *www.stb.gov* under Docket No. EP 526 (Sub-No. 13).

**FOR FURTHER INFORMATION CONTACT:** Katherine Bourdon at (202) 245–0285. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–47, 11101–24), the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–07), as well as railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–27).

The ICC Termination Act of 1995 (ICCTA), enacted on December 29, 1995, established RSTAC to advise the Board's Chairman, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. ICCTA instructs RSTAC to endeavor to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The members of RSTAC also prepare an annual report concerning RSTAC's activities. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC's 15 appointed members consist of representatives of small and large shippers, and small and large railroads. In addition, members of the Board and the Secretary of Transportation serve as ex officio members. Of the 15 appointed members, nine are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chairman, and at least four of the voting members must be representatives of Class II or III railroads. The remaining six members to be appointed—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but may participate in RSTAC deliberations.

Meetings of RSTAC are required by statute to be held at least semi-annually. In recent years, RSTAC has met four times a year. Meetings are generally held at the Board's headquarters in Washington, DC, although some meetings are held in other locations.

The members of RSTAC receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses. Currently, RSTAC members have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RSTAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns,* 79 FR 47482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

Each RSTAC member is appointed for a term of three years. A member may serve after the expiration of his or her term until a successor has taken office. No member will be eligible to serve in excess of two consecutive terms.

Due to the upcoming expiration of two members' second terms, two large shipper representative vacancies will exist on RSTAC. Suggestions for candidates to fill the vacancies should be submitted in letter form, identifying the name of the candidate, providing a summary of why the candidate is qualified to serve on RSTAC, and containing a representation that the candidate is willing to serve as an RSTAC member effective immediately upon appointment. RSTAC candidate suggestions should be filed with the Board by October 31, 2019. Members selected to serve on RSTAC are chosen at the discretion of the Board Chairman. Please note that submissions will be posted on the Board's website under Docket No. EP 526 (Sub-No. 13) and can also be obtained by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at *RCPA@stb.gov* or (202) 245–0238.

**Authority:** 49 U.S.C. 1325.

Decided: September 26, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2019–21270 Filed 9–30–19; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2019–0772]**

### Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Pilot Reports (PIREP)

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves an aircraft pilot's voluntary submission of weather conditions that were encountered while in flight. The information to be collected is necessary because Pilot Report (PIREP) Solicitation and Dissemination has been identified by the ATO as one of the Top 5 hazards in the National Airspace System (NAS). For certain weather conditions, PIREPs are the only means of confirmation that forecasted conditions are occurring. The FAA 7110–2 PIREP Form is a guide to assist pilots in submitting Pilot Weather Reports into the NAS.

**DATES:** Written comments should be submitted by November 30, 2019.

**ADDRESSES:** Please send written comments:

*By Electronic Docket: www.regulations.gov* (Enter docket number into search field).

*By mail:* Federal Aviation Administration, Mail Stop AJR–B1, 800 Independence Ave SW, Suite 300 W, Washington, DC 20591.

*By fax:* 202–267–6310.

**FOR FURTHER INFORMATION CONTACT:** Michael Helwig by email at: *michael.helwig@faa.gov;* phone: 202–267–1666.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–XXXX.

*Title:* Pilot Reports (PIREP).

*Form Numbers:* FAA 7110–2.

*Type of Review:* New information collection.

*Background:* The guidance for collecting PIREP information is contained in FAAO 7110. 10, Flight Service, of which System Operations Services (AJR) is the office of primary responsibility.

*Respondents:* Pilots, as of 9/21/19, 53,976 PIREPs have been entered in the NAS.

*Frequency:* On occasion, depending on the weather conditions encountered.

*Estimated Average Burden per Response:* 2–3 minutes.

*Estimated Total Annual Burden:* <1 hour per respondent.

Issued in Washington, DC, on September, 26, 2019.

**Michael C. Artist,**

*Vice President, System Operations Services, Air Traffic Organization.*

[FR Doc. 2019–21257 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117; FMCSA–2017–0180]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 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 continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below

and will expire on the dates stated in the discussions below. Comments must be received on or before October 31, 2019.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2008–0355, Docket No. FMCSA–2012–0050, Docket No. FMCSA–2013–0106, Docket No. FMCSA–2014–0214, Docket No. FMCSA–2014–0381, Docket No. FMCSA–2015–0115, Docket No. FMCSA–2015–0117, Docket No. FMCSA–2017–0180.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**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 Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2008–0355, Docket No. FMCSA–2012–0050, Docket No. FMCSA–2013–0106, Docket No. FMCSA–2014–0214, Docket No. FMCSA–2014–0381, Docket No. FMCSA–2015–0115, Docket No. FMCSA–2015–0117, Docket No. FMCSA–2017–0180), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117; FMCSA–2017–0180, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

### *B. 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.* Insert the docket number, FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117; FMCSA–2017–0180, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., 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

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 physical qualification standard for drivers regarding epilepsy found in 49 CFR 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.

The ten individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

[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.*

## IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the ten applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The ten drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of September and are discussed below.

As of September 2, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV driver: Daniel Maben (MI).

The driver was included in docket number FMCSA–2017–0180. Their exemption is applicable as of September 2, 2019, and will expire on September 2, 2021.

As of September 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Ronald Boogay (NJ)
Todd W. Brock (CO)
Jason Kirkham (WI)
Ivan M. Martin (PA)
Charles A. McCarthy, III (MA)
Douglas S. Slagel (OH)
Cory R. Wagner (IL)
Timothy M. Zahratka (MN)

The drivers were included in docket number FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117. Their exemptions are applicable as of September 12, 2019, and will expire on September 12, 2021.

## V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (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. The exemption will be rescinded if: (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 before it was 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).

## 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 on its evaluation of the ten exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: September 25, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–21280 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0104]**

### Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

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

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its decision to deny applications from three individuals treated with Implantable Cardioverter Defibrillators (ICDs) who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure.

**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 materials in the docket, contact Docket Operations, (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-2019-0104* 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 May 22, 2019, FMCSA published a FR notice (84 FR 23632) announcing receipt of applications from three individuals treated with ICDs and requested comments from the public. These three individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on June 21, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the May 22, 2019, **Federal Register** notice and will not be repeated here.

The Agency's decision regarding these exemption applications is based on information from the Cardiovascular Medical Advisory Criteria, an April 2007 evidence report titled ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,'' [1] and a December 2014 focused research report titled ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of these reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.[2] The advisory criteria for § 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## 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 Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, available medical and scientific data concerning ICDs, and any relevant public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. The December 2014 focused research report referenced previously upholds the findings of the April 2007 report and indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety.

## V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following three applicants have been denied exemptions from the physical qualification standards in § 391.41(b)(4):

Martin Carter (ME)
Vincent Collelo (WI)
Richard D. Siske (OH)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Issued on: September 25, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–21282 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] The reports are available on the internet at *https://rosap.ntl.bts.gov/view/dot/16462; https://rosap.ntl.bts.gov/view/dot/21199.*

[2] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, 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.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0015]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 15 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before October 31, 2019.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0015 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0015.* 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**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 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. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0015), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0015.* 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 this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0015* 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

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 15 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

**III. Qualifications of Applicants**

*David E. Bryant, Jr.*

Mr. Bryant, has a macular scar in the right eye due to sarcoidosis in 1993. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my medical opinion, Mr. Bryant has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bryant reported that he has driven straight trucks for 30 years, accumulating 750,000 miles, tractor-trailer combinations for 25 years, accumulating 1.5 million miles, and buses for 30 years, accumulating 90,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows two crashes, for which he was not cited, and no convictions for moving violations in a CMV.

*Zackary C. Crichton*

Mr. Crichton, 31, has retinopathy in his right eye due to toxoplasmosis in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Zachary [sic] has had this condition since he was 12. At this time in my medical opinion, I do believe Zachary [sic] can safely operate a commercial vehicle as he has for many years with this condition.'' Mr. Crichton reported that he has driven straight trucks for six years, accumulating 150,000 miles, and tractor-trailer combinations for six years, accumulating 300,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Terence P. Dailey*

Mr. Dailey, 63, has corneal scars in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2019, his ophthalmologist stated, ''According to my medical opinion based on his August 12, 2019 dilated comprehensive eye examination, he is capable of operating a commercial vehicle.'' Mr. Dailey reported that he has driven straight trucks for 49 years, accumulating 1.2 million miles, and tractor-trailer combinations for five years, accumulating 75,000 miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Robert K. Eggleston*

Mr. Eggleston, 31, has had amblyopia in the left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2019, his ophthalmologist stated, ''In my opinion this patient has sufficient vision to perform all driving tasks required to operate a commercial vehicle.'' Mr. Eggleston reported that he has driven straight trucks for six years, accumulating 249,000 miles, and tractor-trailer combinations for one year, accumulating 1,000 miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Luiz Gonzalez*

Mr. Gonzalez, 33, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''He has lived his entire life with his vision exactly the way it is now and poses no threat while driving a commercial vehicle.'' Mr. Gonzalez reported that he has driven straight trucks for five years, accumulating 130,000 miles. He holds an operator's license from New Jersey. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Ahmed M. Gutale*

Mr. Gutale, 46, has a prosthetic in his left eye due to a traumatic incident in 2004. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his ophthalmologist stated, ''I certify that in my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gutale reported that he has driven tractor-trailer combinations for 19 years, accumulating 1.5 million miles. He holds a Class A CDL from Minnesota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*James W. Harris*

Mr. Harris, 68, has had a paracentral scotoma in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/30. Following an examination in 2019, his optometrist stated, ''Due to the long standing nature of his vision deficiency and driving record, I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harris reported that he has driven tractor-trailer combinations for 50 years, accumulating 1.6 million miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Dobbin L. Kirkbride*

Mr. Kirkbride, 54, has a cataract in his left eye due to a traumatic incident in 2011. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2019, his optometrist stated, ''After an in-depth conversation with Mr. Kirkbride . . . it is my opinion that he has sufficient vision to operate a commercial vehicle.'' Mr. Kirkbride reported that he has driven straight trucks for ten years, accumulating 520,000 miles, and tractor-trailer combinations for 33 years, accumulating 2.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Daniel F. Large*

Mr. Large, 40, has a retinal detachment in his right eye due to a traumatic incident in 2007. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2019, his ophthalmologist stated, ''In summary, I believe Mr. Large has sufficient vision to perform his tasks of operating a commercial vehicle.'' Mr. Large reported that he has driven straight trucks for 12 years, accumulating 132,000 miles, and tractor-trailer combinations for 12 years, accumulating 168,000 miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Jonathan D. Matlasz*

Mr. Matlasz, 44, has had lenticonus in his right eye since birth. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''He has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Matlasz reported that he has driven straight trucks for eight years, accumulating 120,000 miles. He holds a Class B CDL from Connecticut. His driving record for the last three years

shows no crashes and no convictions for moving violations in a CMV.

*James Muldoon*

Mr. Muldoon, 57, has a cataract in his left eye due to a traumatic incident in 1966. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2019, his ophthalmologist stated, ''Based of records I have seen from 2011 he has no interval changes in his vision and his commercial license status should not be changed, as in my opinion he has sufficient vision to drive a commercial vehicle.'' Mr. Muldoon reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.17 million miles. He holds a Class AM CDL from New York. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Andrew R. Peel*

Mr. Peel, 44, has a retinal detachment in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2019, his optometrist stated, ''In my opinion, Andrew has sufficient vision to operate a commercial vehicle, as he has been doing this for the past 20 years, as long as he is wearing his glasses prescription and has appropriate mirrors for a commercial vehicle.'' Mr. Peel reported that he has driven straight trucks for 17 years, accumulating 391,000 miles, and tractor-trailer combinations for 17 years, accumulating 459,000 miles. He holds a Class A CDL from Montana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*William D. Shelt*

Mr. Shelt, 43, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2019, his optometrist stated, ''Patient has sufficient vision to operate a commercial vehicle.'' Mr. Shelt reported that he has driven straight trucks for 20 years, accumulating 600,000 miles. He holds an operator's license from Alabama. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*James L. Stacy*

Mr. Stacy, 53, has a macular hole in his right eye due to a traumatic incident in 2008. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Due to Mr. Stacy's intact visual fields and 20/20 O.U. acuity at distance and near, I believe Mr. Stacy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stacy reported that he has driven tractor-trailer combinations for ten years, accumulating 500,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*James J. Walsh*

Mr. Walsh, 42, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2019, his optometrist stated, ''I do feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Walsh reported that he has driven straight trucks for 21 years, accumulating 850,000 miles. He holds a Class B CDL from New Hampshire. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

## IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: September 25, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–21285 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0167]**

### Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

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

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from four individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with implantable cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before October 31, 2019.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA–2019–0167 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0167.* 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**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. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0167), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online or by fax, mail, or hand delivery, but please use only one of these 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 *http://www.regulations.gov/docket?D=FMCSA-2019-0167.* 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 this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0167* 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

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 four individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria[1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

## III. Qualifications of Applicants

*Christopher Cloud*

Mr. Cloud is a CMV driver in Georgia. An April 2019, letter from his cardiologist states that Mr. Cloud's ICD was implanted in May of 2016, has not deployed, he denies any symptoms associated with the device, and that his ejection fraction has now improved with low risk of cardiovascular complications.

*Joby Doucet*

Mr. Doucet is a Class A CDL holder in Louisiana. A May 15, 2019, letter from his cardiologist states that Mr. Doucet's ICD was implanted in September of 2017, he is on good medical therapy, and there has been no defibrillator discharges. Mr. Doucet's cardiologist reports that he is in a stable cardiovascular status and will have follow-up in 6 months.

*Robert D. Forbes*

Mr. Forbes is a Class A CDL holder in New York State. A March 2019, letter from Mr. Forbes' cardiologist states that his ICD was implanted in September of 2015, has never deployed, and that he has an improved ejection fraction.

*Christopher Oakland*

Mr. Oakland is a Class A CDL holder in Rhode Island. Two separate letters both dated June of 2019, from two of Mr. Oakland's cardiologists state that his ICD was implanted in August of 2018, and has never delivered therapy. His cardiologists' letters report that Mr. Oakland is stable and has not experienced symptoms as a result of his cardiac condition.

## IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: September 25, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–21283 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–EX–P**

[1] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, 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.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2019–0191]**

### Agency Information Collection Activities; Renewal of a Currently-Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to operate on public highways.

**DATES:** We must receive your comments on or before December 2, 2019.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket

Number FMCSA–2019–0191 using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Secrist, Office of Registration and Safety Information, Chief, Registration, Licensing and Insurance Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2367; email: *jeff.secrist@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carriers of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

*Title:* Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

*OMB Control Number:* 2126–0008.

*Type of Request:* Renewal of a currently-approved information collection.

*Respondents:* Insurance underwriters for insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and passengers (Forms MCS–90B and MCS–82B), motor carrier clerks employed by motor carriers (storing/maintaining insurance and/or surety bond documentation), and vehicle maintenance staff employed by Canadian and Mexican/non-North-American (NNA) domiciled motor carriers (placing copies of documentation in vehicles).

*Estimated Number of Respondents:* 202,458.

*Estimated Time per Response:* FMCSA estimates it takes 2 minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability (Forms MCS–90 for property carriers and MCS–90B for passenger carriers) or the Motor Carrier Public Liability Surety Bond (Forms MCS–82 for property carriers and MCS–82B for passenger carriers); 1 minute to store/maintain documents at the motor carrier's place of business [49 CFR 387.7(d); 49 CFR 387.31(d)]; and 1 minute to place either document on board the vehicle, required for Canadian and Mexican/NNA carriers operating in the United States [49 CFR 387.7(f); 387.31(f)].

*Expiration Date:* January 31, 2020.

*Frequency of Response:* Upon creation, change, or replacement of an insurance policy or surety bond.

*Estimated Total Annual Burden:* 5,739 hours [4,931 annual burden hours for ICs 1–4 + 808 annual burden hours for IC–5 document placement in vehicles = 5,739].

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: September 25, 2019.

**Kenneth Riddle,**

*Director for Office of Registration and Safety Information.*

[FR Doc. 2019–21275 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0355; FMCSA–2011–0089; FMCSA–2014–0381; FMCSA–2014–0382]**

### 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 renew exemptions for four 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

continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on July 12, 2019. The exemptions expire on July 12, 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 Operations, (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.* Insert the docket number, FMCSA–2008–0355; FMCSA–2011–0089; FMCSA–2014–0381; FMCSA–2014–0382, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., 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 August 5, 2019, FMCSA published a notice announcing its decision to renew exemptions for four individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (84 FR 38095). The public comment period ended on September 4, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions 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 in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Conclusion

Based on its evaluation of the four renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of July 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 38095):

Prince Austin, Jr. (OH)
Frank Cekovic (PA)
Martin Ford (MS)
Michael Weymouth (NH)

The drivers were included in docket number FMCSA–2008–0355; FMCSA–2011–0089; FMCSA–2014–0381; FMCSA–2014–0382. Their exemptions are applicable as of July 12, 2019, and will expire on July 12, 2021.

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).

[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.*

Issued on: September 25, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–21279 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2001–9258; FMCSA–2001–9561; FMCSA–2002–11714; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2006–26653; FMCSA–2007–2663; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2009–0054; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0102; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0022; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2014–0006; FMCSA–2014–0010; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016; FMCSA–2017–0019; FMCSA–2017–0020]**

## Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 126 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

**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.* Insert the docket number, FMCSA–2001–9258; FMCSA–2001–9561; FMCSA–2002–11714; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2006–26653; FMCSA–2007–2663; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2009–0054; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0102; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0022; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2014–0006; FMCSA–2014–0010; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016; FMCSA–2017–0019; or FMCSA–2017–0020, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., 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 August 5, 2019, FMCSA published a notice announcing its decision to renew exemptions for 126 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 38097). The public comment period ended on September 4, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Conclusion

Based on its evaluation of the 126 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of August and are discussed below. As of August 8, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 65 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 67 FR 15662; 67 FR 37907; 67 FR 76439; 68 FR 10298; 68 FR 19598; 68 FR 33570; 68 FR 44837; 69 FR 26206; 70 FR 7545; 70 FR 17504; 70 FR 25878; 70 FR 30997; 70 FR 41811; 71 FR 26601; 71 FR 26602; 72 FR 7812; 72 FR 8417; 72 FR 12666; 72 FR 21313; 72 FR 25831; 72 FR 27624; 72 FR 28093; 72 FR 32703; 72 FR 36099; 72 FR 39879; 72 FR 40362; 72 FR 52419; 73 FR 27017; 73 FR 36955; 74 FR 11988; 74 FR 15586; 74 FR 19267; 74 FR 19270; 74 FR 20253; 74 FR 21427; 74 FR 23472; 74 FR 26461; 74 FR 26466; 74 FR 28094; 74 FR 34395; 74 FR 34630; 75 FR 27621; 75 FR 36779; 75 FR 66423; 75 FR 72863; 76 FR 2190; 76 FR 9856; 76 FR 17481; 76 FR 20076; 76 FR 21796; 76 FR 25762; 76 FR 28125; 76 FR 29022; 76 FR 29026; 76 FR 32016; 76 FR 32017; 76 FR 37168; 76 FR 37173; 76 FR 44082; 76 FR 44652; 77 FR 27849; 77 FR 38384; 77 FR 74273; 78 FR 12815; 78 FR 14410; 78 FR 18667; 78 FR 20376; 78 FR 22596; 78 FR 22602; 78 FR 24300; 78 FR 24798; 78 FR 27281; 78 FR 30954; 78 FR 32703; 78 FR 32708; 78 FR 34141; 78 FR 41188; 78 FR 46407; 78 FR 51268; 78 FR 51269; 78 FR 56993; 78 FR 57679; 79 FR 35212; 79 FR 35218; 79 FR 47175; 79 FR 51643; 79 FR 64001; 79 FR 73687; 80 FR 12248; 80 FR 14223; 80 FR 16500; 80 FR 16502; 80 FR 18696; 80 FR 22773; 80 FR 25766; 80 FR 25768; 80 FR 26320; 80 FR 29149; 80 FR 29152; 80 FR 29154; 80 FR 31635; 80 FR 31636; 80 FR 31957; 80 FR 33007; 80 FR 33011; 80 FR 35699; 80 FR 36395; 80 FR 36398; 80 FR 37718; 80 FR 45573; 80 FR 48404; 80 FR 48413; 81 FR 59266; 81 FR 70248; 81 FR 74494; 81 FR 80161; 81 FR 86063; 81 FR 90046; 81 FR 91239; 82 FR 12678; 82 FR 12683; 82 FR 13045; 82 FR 13048; 82 FR 15277; 82 FR 17736; 82 FR 18949; 82 FR 18954; 82 FR 18956; 82 FR 26224; 82 FR 28734; 82 FR 32919; 82 FR 33542; 82 FR 37499):

Joshua A. Akshar (NY)
Dakota A. Albrecht (MN)
James C. Barr (OH)
Russell A. Bolduc (CT)
Steven R. Brinegar (TX)
Ryan L. Brown (IL)
Bernabe V. Cerda (TX)
Don A. Clymer (PA)
Dennis W. Cosens (NM)
William T. Costie (NY)
Paul W. Dawson (CO)
Everett A. Doty (AZ)
Timothy H. DuBois (MN)
Eric Esplin (UT)
Raymond C. Favreau (VT)
Kevin M. Finn (NY)
William B. Friend (MD)
Greg E. Gage (IA)
Odus P. Gautney (TX)
Dale R. Goodell (SD)
Edward J. Grant (IL)
Ramon L. Green (LA)
Jose J. Guzman-Olguin (IL)
Johnnie L. Hall (MD)
Gary D. Hallman (AL)
Daniel L. Holman (UT)
Tommy T. Hudson (VA)
David A. Inman (IN)
Joseph M. Jones (ID)
Harry L. Jones (OH)
James J. Keranen (MI)
Cody A. Keys (OK)
David J. Kibble (PA)
Thomas Korycki (NJ)
Larry G. Kreke (IL)
Michael Lafferty (ID)
Ryan P. Lambert (UT)
David C. Leoffler (CO)
Emanuel N. Malone (VA)
James McClure (NC)
Steven J. McLain (TN)
Zagar E. Melvin (NJ)
Daniel R. Murphy (WI)

Travis W. Neiwert (ID)
Armando F. Pederoso Jimenez (MN)
Donald W. Randall (OR)
Scott K. Richardson (OH)
Elvis E. Rogers, Jr. (TX)
Leo D. Roy (NH)
Antonio Sanchez (NJ)
Jose C. Sanchez-Sanchez (WY)
Tim M. Seavy (IN)
Raymond Sherrill (PA)
Kyle C. Shover (NJ)
Rick J. Smart (NH)
Bill J. Thierolf (NE)
Steven L. Thomas (IN)
David R. Thomas (AL)
Eric M. Turton (NY)
Roy J. Ware (GA)
Marcus R. Watkins (TX)
Paul C. Weiss (PA)
Daniel A. Wescott (CO)
James Whiteway (TX)
Edward A. Ziehlke (WI)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2002–11714; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2006–26653; FMCSA–2007–2663; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2009–0054; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0102; FMCSA–2013–0022; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2014–0006; FMCSA–2014–0010; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016. Their exemptions are applicable as of August 8, 2019, and will expire on August 8, 2021.

As of August 10, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 30999; 70 FR 33937; 70 FR 46567; 72 FR 32705; 72 FR 40359; 74 FR 26464; 74 FR 34074; 76 FR 44653; 79 FR 4531; 80 FR 41547; 82 FR 32919):

Donald M. Jenson (SD)
Dennis D. Lesperance (OR)
Carl V. Murphy, Jr. (TX)

The drivers were included in docket numbers FMCSA–2001–9258; FMCSA–2005–21254. Their exemptions are applicable as of August 10, 2019, and will expire on August 10, 2021.

As of August 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 37169; 76 FR 50318; 79 FR 4531; 80 FR 41548; 82 FR 32919):

Danny F. Burnley (KY)
Sean R. Conorman (MI)
Robert E. Graves (NE)
Terrence F. Ryan (FL)

The drivers were included in docket number FMCSA–2011–0140. Their exemptions are applicable as of August 12, 2019, and will expire on August 12, 2021.

As of August 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 40122; 80 FR 62163; 82 FR 32919):

Pedro Del Bosque (TX)
William D. Cherry (MA)
Anthony C. DeNaples (PA)
Edward Dugue III (NC)
Larry R. Hayes (KS)
Wayne E. Jakob (IL)
Earney J. Knox (MO)
James Smentkowski (NJ)
Neil G. Sturges (NY)
Norman G. Wooten (TX)
Kurt A. Yoder (OH)

The drivers were included in docket number FMCSA–2015–0053. Their exemptions are applicable as of August 13, 2019, and will expire on August 13, 2021.

As of August 15, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 37197; 68 FR 44837; 68 FR 48989; 70 FR 41811; 70 FR 42615; 72 FR 40360; 74 FR 34632; 76 FR 49531; 79 FR 4531; 80 FR 44185; 82 FR 32919):

Steven P. Holden (MD)
Christopher G. Jarvela (MI)
Brad L. Mathna (PA)
Vincent P. Miller (CA)
Warren J. Nyland (MI)
Wesley E. Turner (TX)
Mona J. Van Krieken (OR)
Paul S. Yocum (IN)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2003–15268. Their exemptions are applicable as of August 15, 2019, and will expire on August 15, 2021.

As of August 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 34143; 78 FR 52602; 82 FR 32919):

Twila G. Cole (OR)
Brian D. Dowd (MA)
Randy L. Fales (MN)
Marc C. Grooms (MO)
Craig M. Mahaffey (OH)
Rickey H. Reeder (TN)
Michael L. Sherum (AL)
Dale A. Torkelson (WI)
Desmond Waldor (PA)

The drivers were included in docket number FMCSA–2013–0029. Their exemptions are applicable as of August 23, 2019, and will expire on August 23, 2021.

As of August 25, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 44188; 80 FR 62161; 82 FR 32919; 82 FR 34564; 82 FR 47296):

Harold D. Albrecht (IL)
Robert F. Anneheim (NC)
Ray C. Atkinson (TN)
Joseph W. Bahr (NJ)
Stephen C. Brueggeman (KY)
Robert J. Falanga (FL)
Refugio Haro (IL)
Kevin L. Harrison (TN)
Duane S. Lozinski (IA)
Keith W. McNabb (ID)
Ronald W. Neujahr (KS)
Robert E. Richards (ME)
Thomas E. Riley (NJ)
James R. Robinette (VA)
Rick R. Warner (MI)
Theodore A. White (PA)

The drivers were included in docket numbers FMCSA–2015–0055; FMCSA–2017–0020. Their exemptions are applicable as of August 25, 2019, and will expire on August 25, 2021.

As of August 29, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 40445; 76 FR 53710; 79 FR 4531; 82 FR 32919; 82 FR 35043):

Thomas A. Barber (NC)
Patrick J. Conner (OK)
Jay D. Diebel (MI)
Danny G. Goodman (TX)
Randy N. Grandfield (VT)
James Howard (CA)
Edgar A. Ideler (IL)
Ramon Melendez (NJ)
John J. Tilton (NH)

Randy D. VanScoy (IA)

The drivers were included in docket numbers FMCSA–2011–0141; FMCSA–2017–0019. Their exemptions are applicable as of August 29, 2019, and will expire on August 29, 2021.

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: September 25, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–21284 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0331]**

## Hours of Service of Drivers: National Mobile Shower and Catering Association; Application for Exemption

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

**ACTION:** Notice of final disposition; grant of application for an exemption.

**SUMMARY:** FMCSA announces its decision to grant the National Mobile Shower and Catering Association's (NMSCA) request for an exemption from various provisions of the Federal hours-of-service (HOS) rules for commercial motor vehicle (CMV) drivers. The requested exemption was made on behalf of those drivers employed by NMSCA member companies engaged in the transportation of equipment that provides food and water services to Federally-contracted forest firefighters and similar emergency workers who establish temporary base camps and have immediate need of food and water services near fire scenes. FMCSA analyzed the exemption application and public comments, and determined that the applicant would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** This exemption is effective October 1, 2019 and expires October 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. 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

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, FMCSA–2018–0331 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, 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 reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (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

The NMSCA seeks the exemption for a group of approximately 30 member companies who are strategically positioned in the Western states. Wildfires occur frequently during certain months of the year, especially in Western states. To fight these fires, the National Forest Service and similar agencies call upon Federally-contracted private fire-fighting companies, who are exempt from the majority of the Federal Motor Carrier Safety Regulations (FMCSRs) [49 CFR 390.3T(f)(5)] when they respond. Upon arriving near the fire scene, the firefighters establish a base camp where they will remain for a period ranging from a few days to a month, and will quickly require food and drinking water. To meet that need, the responsible government agency will issue a ''Resource Order'' to the nearest mobile shower and catering company that is under contract.

The NMSCA requested an exemption from certain hours-of-service (HOS) regulations for their member companies' drivers who are responding under a ''Resource Order.'' A ''Resource Order'' is a task order issued by a Federal Agency directing firefighters and supporting personnel to respond to forest fires and similar emergencies. NMSCA specifically requested that while operating under a ''Resource Order'' their drivers and carriers: (1) May extend the 14-hour duty period to no more than 16 hours; (2) need not include ''waiting time'' while not performing duties in the calculation of the 16-hour period; (3) need not comply with the minimum 30-minute rest break provision; (4) may extend the maximum 60 hours on duty in any 7 days to 80 hours on duty in any 7 days; (5) may extend the 11 hours of driving time to 12 hours, and (6) may extend the ''8 days in 30'' provision for exemption from use of an electronic logging device to ''12 days in 30.''

According to NMSCA, their member companies' equipment does not qualify for the 49 CFR 390.3T(f)(5) exception for emergency equipment, so, while firefighters respond and set up their base camps, they have little food or water until an NMSCA member's equipment arrives at a later time. The exemption is needed both to expedite response to the incident and to allow HOS flexibility for the crews while operating for days at the base camps. While there, the crew members often need to drive CMVs to obtain supplies, in particular, water. Although the crew members have substantial rest time and have sleeping quarters on site, the

current HOS regulations may at times hinder their mission support.

A copy of NMSCA's application for exemption is available for review in the docket for this notice.

## IV. Public Comments

On November 27, 2018, FMCSA published notice of this application and requested public comment (83 FR 60943). The Agency received 5 comments.

The Advocates for Highway and Auto Safety (Advocates) and the Commercial Vehicle Safety Alliance (CVSA) opposed the exemption request. Excerpts from the Advocates' comments are as follows: ''Advocates [strongly] opposes the current petition as it is unnecessary and would substantially degrade public safety . . . NMSCA has provided no discussion of the regulatory relief presently available to motor carriers during an emergency under 49 CFR 390.23. Furthermore, the only countermeasures discussed by the Applicant indicate that their drivers will have, essentially, taken a short class on the dangers of fatigue and will comply with existing regulations which prohibit driving in a fatigued state. This description falls short of a complete analysis and ignores the underlying reasons for the HOS and electronic logging device (ELD) requirements.''

CVSA opposed the exemption request, which it views as both unjustified and impractical. The CVSA believes exemptions from Federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. The FMCSRs and the Hazardous Materials Regulations (HMR) exist to ensure that those operating in the transportation industry are equipped to do so safely. CVSA added that, if granted, this exemption would place an excessive burden on the enforcement community and negatively impact safety.

The remaining comments were filed by individuals expressing opposition to the NMSCA request. One said: ''If NMSCA employees are responding to an emergency much of what they're requesting is covered by Part 390; therefore, no exemption is required.''

## V. FMCSA Decision

FMCSA has evaluated NMSCA's application and the public comments and decided to grant parts of the request, while denying other parts. Although all comments filed to the docket opposed the exemption, the Agency believes that granting part of the request is appropriate and that the terms and conditions of the exemption will achieve the requisite level of safety.

The Agency believes that allowing drivers to extend the 14-hour duty period in § 395.3(a)(2) to no more than 16 hours would provide an equivalent level of safety because the drivers operating under the exemption would rarely be required to drive up to 11 hours during the work shift. The challenge drivers face when providing support for firefighting crews is that they would occasionally have to operate a CMV after the 14th hour of coming on duty. Driving significantly less than the maximum allowable hours ensures an equivalent level of safety, even when hours behind the wheel occur towards the end of the work shift. Although the exemption does not prohibit individuals from driving up to 11 hours during a work shift, the nature of the firefighting support operations is such that CMV drivers would spend most of their shift in the on-duty, not driving, status.

The Agency believes that providing relief from the 30-minute rest break provision in § 395.3(a)(3)(ii) would achieve an equivalent level of safety because the drivers in question take numerous breaks during their work shift, and spend most of their time in the on-duty, not driving, status. While the breaks from the driving tasks are not off-duty breaks, the absence of long periods of continuous driving minimizes the risks of individuals operating while fatigued.

With regard to relief from electronic records of duty status (RODS), the Agency notes that the existing regulations allow motor carriers and drivers to avoid the use of electronic logging devices (ELDs) if their operations do not require RODS more than 8 days in a 30-day period, which may be the case for short-haul operations under § 395.1(e)(1). NMSCA drivers would continue to comply with the driving time limits and the requirement to maintain accurate RODS and supporting documents which could be used to verify compliance with the terms and conditions of the exemption. The exemption would provide up to four additional days of relief from the ELD requirement (12 days instead of 8) during a 30-day period.

Because the relief is applicable only when the NMSCA member companies are operating under a ''Resource Order'' or other comparable order issued by a Federal government agency, relief from the ELD rule would not be continuous throughout the year, and the retention of paper RODS and supporting documents during these periods for the limited number of NMSCA members provides an effective alternative for verifying compliance with terms and conditions of the exemption and the applicable hours of service requirements.

Finally, the requirement that drivers have 24 consecutive hours off-duty at the completion of camp activities/demobilization before driving a CMV in operations not covered by the exemption, combined with North American Fatigue Management Program (NAFMP) training, ensures the individuals understand the importance of obtaining an adequate amount of rest, even under difficult operating conditions, and that they have the opportunity for rest when the firefighting support activities have ended.

FMCSA notes that NMSCA has not notified the Agency of any reportable accidents while operating under the terms and conditions 2018 HOS waiver. With the imposed terms and conditions, the Agency believes that NMSCA drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)].

FMCSA denies NMSCA's request to allow ''waiting time'' to extend the window during which driving of CMVs is allowed because the Agency does not believe such relief would achieve an equivalent level of safety. While such relief was provided in the 2018 waiver, the waiver was limited to no more than 90 days to accommodate the urgency of the 2018 firefighting season. In the context of an exemption, the Agency does not believe the relief is appropriate because the frequency and time span of its possible use increase the risk of unsafe operations. As such, the Agency does not believe an exemption that excludes waiting time from the calculations of the driving time window would provide an equivalent level of safety.

FMCSA also denies NMSCA's request to extend the weekly limits for on-duty time. Currently, the Agency's regulations prohibit driving a CMV after a driver accumulates 60 hours of on-duty time within seven consecutive days (60-hour rule). Drivers may restart the calculations of the 60-hour rule at any time they have 34 consecutive hours off-duty. NMSCA requested that the Agency allow drivers up to 80 hours of on-duty time within seven consecutive days before the driver would be prohibited from operating CMVs. The Agency is not aware of any information that would support such an increase in the amount of on-duty time before the driver would be required to have at least 34 consecutive hours off-duty. The increase would significantly

increase the risk of drivers with cumulative fatigue operating CMVs on public roads.

## VI. Terms and Conditions for the Exemption

This exemption is restricted to CMV drivers employed by NMSCA members transporting equipment to provide food and water services to contracted firefighters at designated base camps as follows:

(1) The exemption is in effect only for periods of time when NMSCA members are operating under a ''Resource Order'' or other comparable order issued by a Federal government agency.

(2) Drivers operating under the exemption must be employed by the NMSCA companies listed in the attachment to this letter.

(3) Drivers must provide proof that they are operating for one of the designated NMSCA member companies, and must produce a copy of the relevant Resource Order, or other comparable order, upon request of law enforcement officers.

(4) When operating under this exemption, drivers and carriers:

a. May extend the 14-hour duty period in § 395.3(a)(2) to no more than 16 hours;

b. Need not comply with the minimum 30-minute rest break provision in § 395.3(a)(3)(ii);

c. May extend the ''8 days in 30'' provision in § 395.8(a)(1)(iii)(A)(1) to ''12 days in 30'';

(5) Drivers must have at least 24 consecutive hours off-duty at the completion of camp activities/demobilization before driving a commercial motor vehicle.

(6) Drivers must complete the Driver Education Module 3 and the Driver Sleep Disorders and Management Module 8 of the North American Fatigue Management Program (NAFMP) (*www.nafmp.org*) prior to operating under the exemption; and

(7) Motor carriers and drivers must comply with all other provisions of the Federal Motor Carrier Safety Regulations.

This exemption is contingent upon each carrier maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any ''imminent hazard'' or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must be in possession of the exemption document and, if required, maintain a valid commercial driver's license with required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

*Preemption*

In accordance with 49 U.S.C.31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

*Notification to FMCSA*

Under the exemption, each member company listed in the attachment of this letter must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

a. Identifier of the Exemption: ''NMSCA,''

b. Name of operating carrier and USDOT number,

c. Date of the accident,

d. City or town, and State, in which the accident occurred, or closest to the accident scene,

e. Driver's name and license number,

f. Co-driver's name (if any) and license number

g. Vehicle number and state license number,

h. Number of individuals suffering physical injury,

i. Number of fatalities,

j. The police-reported cause of the accident,

k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and

l. The total driving time and total on-duty time prior to the accident.

## VIII. Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: September 25, 2019.

**Raymond P. Martinez,**

*Administrator.*

| Company name | DOT No. | Address |
|---|---|---|
| **Emergency Mobile Kitchen Members** | | |
| Big Sky Mobile Catering | 362431 | 224 N Higgins Ave., Missoula, MT 59802. |
| Bishop Services | 393418 | P.O. Box 11, Goldendale, WA 98620. |
| Cattlemen's Meat Company | 0689015 | 12 East Main Street, Cut Bank, MT 59427. |
| D.F. Zee's Firefighter Catering | 767697 | 987 Kruse Way, Springfield, OR 97477. |
| For Stars Express | 1023332 | 13124 Firestone Blvd., Santa Fe Springs, CA 90670. |
| Houston's Too | 1262159 | 20645 North 28th Street, Phoenix, AZ 85050. |
| OK'S Cascade Company, LLC | 291137 | 1429 Avenue D, #166, Snohomish, WA 98290. |
| Latitude Catering (R&G Food Service) | 683431 | 4650 S Coach Dr., Ste.110, Tucson, AZ 85714. |
| North Slope Catering | 1123123 | 322 Culver Blvd., #352, Playa Del Rey, CA 90293. |
| NuWay Inc | 340104 | 955 N 4th St., Lander, WY 82520. |
| Ridgeline Support Services | 1262159 | 20645 North 28th Street, Phoenix, AZ 85050. |
| Scofield Catering and Management, Inc | 1904003 | 5450 Ralston St., Suite 104, Ventura, CA 93003. |
| Stewart's Firefighter Food Catering, Inc | 443962 | P.O. Box 818, Redmond, OR 97756. |
| The Lake, Inc | 2408174 | 9716 Pyramid Highway, Sparks, NV 89441. |
| Thunder Mountain Catering, Inc | 1764298 | 5143 N Northwall Ave Boise, ID 83703. |
| Yellowstone Kelly's Catering | 429821 | P.O. Box 80484, Billings, MT 59108. |
| **Emergency Mobile Shower Members** | | |
| A–1 Services PWMSGW | 1744502 | P.O. Box 189, Oak City, UT 84649. |
| A–1 Water | 1745328 | P.O. Box 1552, Goleta, CA 93116. |

| Company name | DOT No. | Address |
|---|---|---|
| AAA Mobile Showers | 2494204 | P.O. Box 4528, Visalia, CA 93278. |
| Action Sanitary, Inc | 906447 | P.O. Box 492, Lower Lake, CA 95457. |
| Alan & Daryl's Vacuum Truck Service, LLC | 886981 | P.O. Box 189. Oak City, UT 84649. |
| B & D Mobile Support Inc | 1851540 | 11030 Hwy 39, Klamath Falls, OR 97603. |
| Backcountry Support Systems | 2881759 | 3011 Jackson Road, Carter, Montana. |
| Big Sky Showers | 1750986 | 224 N Higgins Ave, Missoula, MT 59802. |
| Bishop Services, Inc | 393418 | P.O. Box 11, Goldendale, WA 98620. |
| Bush Fire Services | 875731 | 305 Flat Lick Road, London, KY. |
| El Dorado Water & Showers | 789755 | P.O. Box 944, Placerville, CA 95667. |
| NuWay, Inc | 340104 | 955 N 4th Street, Lander, WY 82520. |
| Ports on Site Services | 1379095 | 305 Flat Lick Road, London, KY. |
| Western Emergency Services | 339360 | P.O. Box 838, Merlin, OR 97532. |

[FR Doc. 2019–21276 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2019–0079]**

### Petition for Special Approval

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 17, 2019, the Southeastern Pennsylvania Transportation Authority (SEPTA) petitioned the Federal Railroad Administration (FRA) for a special approval pursuant to the requirements in 49 CFR part 238, *Passenger Equipment Car Safety Standards.* FRA assigned the petition Docket Number FRA–2019–0079. FRA notes that the equipment for which this special approval is sought is the subject of an existing waiver in Docket Number FRA–2016–0076.

Specifically, SEPTA seeks relief from 49 CFR 238.135(b), which requires that all passenger train exterior side doors and trap doors must be closed when a train is in motion between stations. SEPTA seeks special approval of alternative compliance pursuant to § 238.21(c) for its fleet of Silverliner V cars due to the cars' unique construction.

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 15, 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 *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. 2019–21247 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. DOT–OST–2004–16951]**

### Agency Request for Reinstatement With Change of a Previously Approved Information Collection: Aircraft Accident Liability Insurance

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comment about our intention to request the Office of Management and Budget (OMB)'s approval to reinstate with changes an information collection. The collection involves information from U.S. air carrier's policies of insurance for aircraft accident bodily injury and property damage liability and their filings of a two-page form. The information collected is necessary for DOT to determine whether the air carrier meets DOT criteria for insurance in 14 CFR part 205. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Written comments should be submitted by December 2, 2019.

**ADDRESSES:** You may submit comments [identified by Docket Number DOT-OST–2004–16951] by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operating Officer; U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC

20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2106–0030.

*Title:* Aircraft Accident Liability Insurance, 14 CFR part 205.

*Type of Request:* Reinstatement with changes of a previously approved collection.

*Abstract:* 14 CFR part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

*Respondents:* U.S. and foreign air carriers.

*Estimated Number of Respondents:* 2,508.

*Estimated Total Burden on Respondents:* 875 hours.

*Comments are invited on:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*Authority:* The Paperwork Reduction Act of 1995; 14 CFR part 205.

Issued in Washington, DC, on September 25, 2019.

**Lauralyn J. Remo,**

*Chief, Air Carrier Fitness Division, Office of Aviation Analysis.*

[FR Doc. 2019–21274 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. DOT–OST–2003–15623]**

### Agency Request for Reinstatement With Change of a Previously Approved Information Collection: Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comment about our intention to request the Office of Management and Budget (OMB)'s approval to reinstate with changes an information collection. The collection involves information from air carriers who seek new, reissued, or transferred authority in a new name or use of a trade name. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Written comments should be submitted by December 2, 2019.

**ADDRESSES:** You may submit comments [identified by Docket Number DOT–OST–2003–15623] by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operations Office, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2106–0043.

*Title:* Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers.

*Type of Request:* Reinstatement with changes of a previously approved collection.

*Background:* In accordance with the procedures set forth in 14 CFR part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

*Respondents:* Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

*Estimated Number of Respondents:* 12.

*Estimated Total Burden on Respondents:* 60 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on September 25, 2019.

**Lauralyn J. Remo,**

*Chief, Air Carrier Fitness Division, Office of Aviation Analysis.*

[FR Doc. 2019–21273 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. DOT–OST–2003–15962]**

### Agency Request for Reinstatement With Changes of a Previously Approved Information Collection: Procedures and Evidence Rules for Air Carrier Authority Applications

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to reinstate an information collection with changes. The collection involves anyone who wants to provide air transportation service. The information collected will be used to determine if the applicant meets the requirements to perform the proposed service and is necessary because of Title 49 of the United States Code. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Written comments on this notice should be submitted by December 2, 2019.

**ADDRESSES:** You may submit comments identified by Docket No. DOT–OST–2003–15962 by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operations Office, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2106–0023.

*Title:* Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code—(Amended); 14 CFR part 204—Data to Support Fitness Determinations; 14 CFR part 291—Cargo Operations in Interstate Air Transportation.

*Type of Review:* Reinstatement with changes of a previously approved information collection.

*Background:* To determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR parts 201 and 204.

*Respondents:* Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

*Estimated Number of Respondents:* 76.

*Frequency of Collection:* Occasional.

*Estimated Number of Responses:* 228.

*Average Annual Burden per Respondent:* 45 hours.

*Estimated Total Burden on Respondents:* 8,250 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48).

Issued in Washington, DC, on September 25, 2019.

**Lauralyn J. Remo,**

*Chief, Air Carrier Fitness Division, Office of Aviation Analysis.*

[FR Doc. 2019–21272 Filed 9–30–19; 8:45 am]

**BILLING CODE 4910–9X–P**

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request; Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of $250 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

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

The OCC is soliciting comment concerning a revision to a regulatory reporting requirement for national banks and federal savings associations titled, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $250 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.''

**DATES:** Comments must be received by December 2, 2019.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0319, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–0319'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0319'' or ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $100 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th St. SW, Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's website under News and Issuances (*http://www.occ.treas.gov/tools-forms/forms/bank-operations/stress-test-reporting.html*).

**SUPPLEMENTARY INFORMATION:** The OCC is requesting comment on the following revision to an approved information collection:

*Title:* Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $250 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

*OMB Control No.:* 1557–0319.

*Description:* Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [2] (Dodd-Frank Act) requires certain financial companies, including national banks and federal savings associations, to conduct annual stress tests [3] and requires the primary financial regulatory agency [4] of those financial companies to issue regulations implementing the stress test requirements.[5] Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[6]

On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[7] This rule describes the reports and information collections required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)) to the extent permitted by law.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amends certain aspects of the company-run stress testing requirement in section 165(i)(2) of the Dodd-Frank Act.[8] Specifically, section 401 of EGRRCPA raises the minimum asset threshold for financial companies covered by the company-run stress testing requirement from $10 billion to $250 billion in total consolidated assets; revises the requirement that financial companies conduct stress tests on an ''annual'' basis and instead requires them to be ''periodic''; and no longer requires the OCC to provide an ''adverse'' stress-testing scenario, thus reducing the number of required stress test scenarios from three to two. The amendments made by section 401 of EGRRCPA applicable to depository institutions are effective on November 24, 2019.

The OCC, in coordination with the Board and Federal Deposit Insurance Corporation, is in the process of revising its stress testing regulation to incorporate EGRRPCA's amendments. On February 12, 2019, consistent with section 401 of EGRRCPA, the OCC published a notice of proposed rulemaking (proposed rule or proposal) in the **Federal Register** to amend the stress testing rule.[9] The proposed rule would have revised the minimum threshold for banks to conduct stress tests from $10 billion to $250 billion, revised the frequency by which certain banks would be required to conduct stress tests from annually to biennially, and reduced the number of required stress testing scenarios from three to two by eliminating the requirement for an adverse scenario. The proposed rule would also have made certain additional technical and facilitating changes to the stress testing rule.

In 2012, the OCC first implemented the reporting templates referenced in the final rule. *See* 77 FR 49485 (August 16, 2012) and 77 FR 66663 (November 6, 2012).

The OCC intends to use the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The OCC recognizes that many covered institutions with total consolidated assets of $250 billion or more are required to submit reports using Comprehensive Capital Analysis and Review (CCAR) reporting form FR Y–14A.[10] The OCC also recognizes the Board has proposed to modify the FR Y–14A and, to the extent practical, the OCC will keep its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered institutions.[11] Therefore, the OCC is proposing to revise its reporting requirements to mirror the Board's proposed FR Y–14A for covered institutions with total consolidated assets of $250 billion or more. The proposed changes include updates to various schedules to reflect the current expected credit loss (CECL) accounting methodology. These changes would accommodate covered institutions that have adopted CECL by the reporting date and those that have not yet adopted CECL by the reporting date.[12] The proposed changes also include a collection of supplemental CECL information. The proposed changes also include items not related to CECL adoption. The purpose of these changes is to keep the reporting forms in line with changes in the Consolidated Reports of Condition and Income (Call Report) as well as to provide further clarity or alignment of the instructions with the XML reporting files. There are also changes that would require information to be reported at a different level of granularity.

*Type of Review:* Revision.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 8.

*Estimated Total Annual Burden:* 5,088 hours.

The OCC believes that the systems covered institutions use to prepare the FR Y–14 reporting templates to submit to the Board will also be used to prepare

[2] Public Law 111–203, 124 Stat. 1376, July 2010.

[3] 12 U.S.C. 5365(i)(2)(A).

[4] 12 U.S.C. 5301(12).

[5] 12 U.S.C. 5365(i)(2)(C).

[6] 12 U.S.C. 5365(i)(2)(B).

[7] 77 FR 61238 (October 9, 2012) (codified at 12 CFR part 46).

[8] Public Law 115–174, 132 Stat. 1296–1368 (2018).

[9] 84 FR 3345 (February 12, 2019).

[10] *http://www.federalreserve.gov/reportforms.*

[11] 84 FR 37292 (July 31, 2019); 84 FR 37285 (July 31, 2019).

[12] As discussed in the Supplementary Information section of the OCC's final rule implementing CECL, an institution would reflect CECL in its stress testing reports in the year it adopts CECL. *See* 84 FR 4222 (February 14, 2019).

the reporting templates described in this notice. Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 24, 2019.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2019–21211 Filed 9–30–19; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8997

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning New Form 8997 Initial and Annual Statements of Qualified Opportunity Fund (QOF) Investments.

**DATES:** Written comments should be received on or before December 2, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Dionne McLeod, at (267) 941–6267, Internal Revenue Service, Room 3256, 600 Arch Street, Philadelphia, PA 19106, or through the internet at *Dionne.a.McLeod@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Initial and Annual Statements of Qualified Opportunity Fund (QOF) Investments.

*OMB Number:* 1545–xxxx.

*Form Number:* Form 8997.

*Abstract:* Form 8997 is filed by eligible taxpayers holding a qualified opportunity fund investment at any point during the tax year.

*Current Actions:* The Tax Cuts and Jobs Act (TCJA), section 13823, added section 1400Z–1 to provide for the designation of certain low-income communities as qualified opportunity zones and added section 1400Z–2 to provide certain benefits for investments in these qualified opportunity zones through investment in qualified opportunity funds (QOFs). Taxpayers that invest in qualified opportunity zone property through a QOF can defer the recognition of certain gains. Form 8997 is provided by the IRS to accommodate new section 1400Z–2. It will be used by eligible taxpayers holding a qualified opportunity fund (QOF) investment to report their QOF investments and deferred gains.

*Type of Review:* New Information Collection.

*Affected Public:* individuals; C corporations, including regulated investment companies (RICs) and real estate investment trusts (REITs); partnerships; S corporations; trusts; and estates.

*Estimated Number of Respondents:* 10,000.

*Estimated Time per Respondent:* 1.

*Estimated Total Annual Burden Hours:* 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2019.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2019–21308 Filed 9–30–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8995

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8995 Qualified Business Income Deduction Simplified Computation.

**DATES:** Written comments should be received on or before December 2, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Dionne McLeod, at (267) 941–6267, Internal Revenue Service, Room 3256, 600 Arch Street, Philadelphia, PA 19106. or through the internet at *Dionne.a.McLeod@irs.gov*

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Business Income Deduction Simplified Computation.

*OMB Number:* 1545–xxxx.

*Form Number:* 8995.

*Abstract:* Form 8995 is used by taxpayers to figure the deduction for items of income, gain, deduction, and loss from trades or businesses that are effectively connected with the conduct of a trade or business in the U.S. Current Actions: On December 20, 2017, Congress passed Public Law 115–97(the ''2017 tax act''), titled ''An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' but colloquially known as the ''Tax Cuts and Jobs Act.''

In the legislative history of the 2017 tax act, Congress noted that the reduction in the corporate tax rate did not mitigate the high rates of tax imposed on businesses conducted by noncorporate taxpayers in passthrough form or through sole proprietorships. In order to lower rates, Congress introduced new 199A of the Internal Revenue Code, which provides an income tax benefit to investors in non-corporate businesses, *i.e.,* sole proprietorships, partnerships, and S corporations. Individuals, trusts, and estates who invest in such businesses may be eligible to claim a deduction of up to 20% of the ''qualified business income'' earned by such non-corporate businesses.

The IRS created new Form 8995 to allow eligible taxpayers to claim the deduction.

*Type of Review:* New Information Collection.

*Affected Public:* Estates and Trusts.

*Estimated Number of Respondents:* 10,000.

*Estimated Time per Respondent:* 3 hours.

*Estimated Total Annual Burden Hours:* 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2019.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2019–21307 Filed 9–30–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Cemeteries and Memorials, Notice of Meeting Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on October 22–October 23, 2019. The meeting sessions will take place at the Phoenix Regional Benefits Office, 3333 North Central Avenue, Phoenix, Arizona 85012. The meeting sessions will begin as follows:

| Date: | Time: |
|---|---|
| October 22, 2019 | 8:00 a.m. to 4:30 p.m. (Mountain Time—MT). |
| October 23, 2019 | 8:00 a.m. to 5:00 p.m. MT. |

The meeting sessions are open to the public. If you're interested in attending the meeting virtually, the dial in number for both days is 1–800–767–1750, 02668#.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding such activities.

On Tuesday, October 22, 2019, from 8:00 a.m.–10:00 a.m. MT, the agenda will include remarks from VA Leadership. Directly following the business portion of the meeting, the Committee and VA Staff will visit the San Carlos Apache Tribal Veterans' Cemetery. The Committee will conduct a tour at the Tribal cemetery from 10:00 a.m.–4:30 p.m. MT (includes travel time to and from the cemetery and lunch). Transportation will not be provided for public guests.

On Wednesday, October 23, 2019, from 8:00 a.m.–10:00 a.m. MT, the morning agenda will include remarks from Arizona state cemetery directors. Directly following the morning portion of the meeting, the Committee, VA Staff, and Cemetery Directors will visit the National Memorial Cemetery at Arizona. The Committee will conduct a tour of the national cemetery from 10:00 a.m.–1:00 p.m. MT (includes travel time and lunch). Transportation will not be provided for public guests. The afternoon meeting will commence at 1:30 p.m. The Access, Outreach, and Choice Subcommittee will provide workgroup status updates from 1:30 p.m.–5:00 p.m. MT.

Any member of the public wishing to attend the meeting should contact Ms. Christine Hamilton, Designated Federal Officer, at (202) 461–5681. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *Christine.hamilton1@va.gov* or mailed to the National Cemetery Administration (40A1), 810 Vermont Avenue NW, Room 400, Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: September 26, 2019.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2019–21269 Filed 9–30–19; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

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Part II

## Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191 and 192

Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 191 and 192**

**[Docket No. PHMSA–2011–0023; Amdt. Nos. 191–26; 192–125]**

**RIN 2137–AE72**

# Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas transmission pipelines. This final rule addresses congressional mandates, National Transportation Safety Board recommendations, and responds to public input. The amendments in this final rule address integrity management requirements and other requirements, and they focus on the actions an operator must take to reconfirm the maximum allowable operating pressure of previously untested natural gas transmission pipelines and pipelines lacking certain material or operational records, the periodic assessment of pipelines in populated areas not designated as ''high consequence areas,'' the reporting of exceedances of maximum allowable operating pressure, the consideration of seismicity as a risk factor in integrity management, safety features on in-line inspection launchers and receivers, a 6-month grace period for 7-calendar-year integrity management reassessment intervals, and related recordkeeping provisions.

**DATES:** The effective date of this final rule is July 1, 2020. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 1, 2020. The incorporation by reference of ASME/ANSI B31.8S was approved by the Director of the Federal Register as of January 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Technical questions: Steve Nanney, Project Manager, by telephone at 713–272–2855. General information: Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361.

**SUPPLEMENTARY INFORMATION:**

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## I. Executive Summary

### *A. Purpose of the Regulatory Action*

PHMSA believes that the current regulatory requirements applicable to gas pipeline systems have increased the level of safety associated with the transportation of gas. Still, incidents continue to occur on gas pipeline systems resulting in serious risks to life and property. One such incident occurred in San Bruno, CA, on September 9, 2010, killing 8 people, injuring 51, destroying 38 homes, and damaging another 70 homes (PG&E incident). In its investigation of the incident, the National Transportation Safety Board (NTSB) found among several causal factors that the operator, Pacific Gas and Electric (PG&E), had an inadequate integrity management (IM) program that failed to detect and repair or remove the defective pipe section. PG&E was basing its IM program on incomplete and inaccurate pipeline information, which led to, among other things, faulty risk assessments, improper assessment method selection, and internal assessments of the program that were superficial and resulted in no meaningful improvement in the integrity of the pipeline system nor the IM program itself.

The PG&E incident underscored the need for PHMSA to extend IM requirements and address other issues related to pipeline system integrity. In response, PHMSA published an ANPRM seeking comment on whether IM and other requirements should be strengthened or expanded, and other related issues, on August 25, 2011 (76 FR 53086).

The NTSB adopted its report on the PG&E incident on August 30, 2011, and issued several safety recommendations to PHMSA and other entities. Several of these NTSB recommendations related directly to the topics addressed in the 2011 ANPRM and are addressed in this final rule. Also, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Pipeline Safety Act) was enacted on January 3, 2012. Several of the 2011 Pipeline Safety Act's statutory requirements related directly to the topics addressed in the 2011 ANPRM and are a focus of this rulemaking.

Another incident that influenced this rulemaking was the rupture of a gas transmission pipe operated by Columbia Gas near Sissonville, WV, on December 11, 2012. The escaping gas ignited, and fire damage extended nearly 1,100 feet along the pipeline right-of-way and covered an area roughly 820 feet wide. While there were no fatalities or serious injuries, three houses were destroyed by the fire, and several other houses were damaged. The ruptured pipe was one of three in the area that cross Interstate 77, and the incident closed the highway in both directions for 19 hours until a section of thermally damaged road surface approximately 800 feet long could be replaced. Following this incident, the NTSB finalized an accident report on February 19, 2014, issuing recommendations to PHMSA to include principal arterial roadways,

including interstates, other freeways and expressways, and other principal arterial roadways as defined by the Federal Highway Administration, to the list of ''identified sites'' that establish a high consequence area (HCA) for the purposes of an operator's IM program.

On April 8, 2016, PHMSA published an NPRM to seek public comments on proposed changes to the gas transmission pipeline safety regulations (81 FR 20722). A summary of those proposed changes, and PHMSA's response to stakeholder feedback on the individual provisions, is provided below in section IV of this document (Analysis of Comments and PHMSA Response).

The purpose of this final rule is to increase the level of safety associated with the transportation of gas. PHMSA is finalizing requirements that address the causes of several recent incidents, including the PG&E incident, by clarifying and enhancing existing requirements. PHMSA is also addressing certain statutory mandates of the 2011 Pipeline Safety Act and NTSB recommendations. While the NPRM addressed 16 major topic areas, PHMSA believes the most efficient way to manage the proposals in the NPRM is to divide them into three rulemaking actions. PHMSA is finalizing the provisions in this final rule as a first step. PHMSA anticipates completing a second rulemaking to address the topics in the NPRM regarding repair criteria in HCAs and the creation of new repair criteria for non-HCAs, requirements for inspecting pipelines following extreme events, updates to pipeline corrosion control requirements, codification of a management of change process, clarification of certain other IM requirements, and strengthening IM assessment requirements.[1] A third rulemaking is expected to address requirements related to gas gathering lines that were proposed in the NPRM.[2]

*B. Summary of the Major Provisions of the Regulatory Action in Question*

Several of the amendments made in this rule are related to congressional legislation from the 2011 Pipeline Safety Act. The Act provides a 6-month grace period, with written notice, for the completion of periodic integrity management reassessments that otherwise would be completed no later than every 7 calendar years.[3] Another requirement is that operators explicitly consider and account for seismicity in identifying and evaluating potential threats.[4] The Act also requires operators to report exceedances of the maximum allowable operating pressure (MAOP) of gas transmission pipelines.[5] [6] PHMSA is incorporating these changes into the PSR at 49 CFR parts 190–199 in this final rule.

This rule also requires operators of certain onshore steel gas transmission pipeline segments to reconfirm the MAOP of those segments and gather any necessary material property records they might need to do so, where the records needed to substantiate the MAOP are not traceable, verifiable, and complete. This includes previously untested pipelines, which are commonly referred to as ''grandfathered'' pipelines, operating at or above 30 percent of specified minimum yield strength (SMYS). Records to confirm MAOP include pressure test records or material property records (mechanical properties) that verify the MAOP is appropriate for the class location.[7] Operators with missing records can choose one of six methods to reconfirm their MAOP and must keep the record that is generated by this exercise for the life of the pipeline. PHMSA has also created an opportunistic method by which operators with insufficient material property records can obtain such records. These physical material property and attribute records include the pipeline segment's diameter, wall thickness, seam type, grade (the minimum yield strength and ultimate tensile strength of the pipe), and Charpy V-notch toughness values (full-size specimen and based on the lowest operational temperatures),[8] if applicable or required. PHMSA considers ''insufficient'' material property records to be those records where the pipeline's physical material properties and attributes are not documented in traceable, verifiable, and complete records.

PHMSA is requiring operators to perform integrity assessments on certain pipelines outside of HCAs, whereas prior to this rule's publication, integrity assessments were only required for pipelines in HCAs. Pipelines in Class 3 locations, Class 4 locations, and in the newly defined ''moderate consequence areas'' (MCA)[9] must be assessed initially within 14 years of this rule's publication date and then must be reassessed at least once every 10 years thereafter. These assessments will provide important information to operators about the conditions of their pipelines, including the existence of internal and external corrosion and other anomalies, and will provide an elevated level of safety for the populations in MCAs while continuing to allow operators to prioritize the safety of HCAs. This action fulfills the section 5 mandate from the 2011 Pipeline Safety Act to expand elements of the IM requirements beyond HCAs where appropriate.

This rule also explicitly requires devices on in-line inspection (ILI), launcher or receiver facilities that can safely relieve pressure in the barrel before inserting or removing ILI tools, and requires the use of a device that can indicate whether the pressure has been relieved in the barrel or can otherwise prevent the barrel from being opened if the pressure is not relieved. PHMSA is finalizing this requirement in this final rule because it is aware of incidents where operator personnel have been killed or seriously injured due to pressure build-up at these stations.

*C. Costs and Benefits*

Consistent with Executive Order 12866, PHMSA has prepared an assessment of the benefits and costs of the final rule as well as reasonable alternatives. PHMSA estimates the annual costs of the rule to be approximately $32.7 million, calculated using a 7 percent discount rate. The costs reflect additional integrity assessments, MAOP reconfirmation, and ILI launcher and receiver upgrades.

PHMSA is publishing the Regulatory Impact Analysis (RIA) for this rule in the public docket. The table below

[1] RIN 2137–AF39.

[2] RIN 2137–AF38.

[3] 2011 Pipeline Safety Act § 5(e).

[4] 2011 Pipeline Safety Act § 29.

[5] 2011 Pipeline Safety Act § 23.

[6] MAOP means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this part.

[7] PHMSA uses class locations throughout part 192 to provide safety margins and standards commensurate with the potential consequence of a pipeline failure based on the surrounding population. Class locations are defined at § 192.5. A Class 1 location is an offshore area or a class location unit with 10 or fewer buildings intended for human occupancy. A Class 2 location is a class location unit with more than 10 but fewer than 46 buildings intended for human occupancy. A Class 3 location is a class location unit with 46 or more buildings intended for human occupancy, and a Class 4 location is where buildings with 4-or-more stories above ground are prevalent.

[8] A Charpy V-notch impact test and its values indicate the toughness of a given material at a specified temperature and is used in fracture mechanics analysis.

[9] A MCA is defined in § 191.3 as an onshore area within a potential impact circle, as that term is defined in § 192.903, containing either (1) 5 or more buildings intended for human occupancy or (2) any portion of the paved surface, including shoulders, of a designated interstate, other freeway, or expressway, as well as any other principal arterial roadway with 4 or more lanes, as defined in the Federal Highway Administration's *Highway Functional Classification Concepts, Criteria and Procedures, Section 3.1.*

provides a summary of the estimated costs for the major provisions in this rulemaking (see the RIA for further detail on these estimates). PHMSA finds that the other final rule requirements will not result in incremental costs. PHMSA did not quantify the cost savings from material properties verification under the final rule compared to existing regulations. PHMSA also elected to not quantify the benefits of this rulemaking and instead discusses them qualitatively. PHMSA estimated total annual costs of the rule of $31.4 million using a 3 percent discount rate, and $32.7 million using a 7 percent discount rate.

SUMMARY OF ANNUALIZED COSTS, 2019–2039

[$2017 thousands]

| Provision | Annualized cost | |
|---|---|---|
| | 3% Discount rate | 7% Discount rate |
| 1. MAOP Reconfirmation & Material Properties Verification | $25,848 | $27,899 |
| 2. Seismicity | 0.00 | 0.00 |
| 3. Six-Month Grace Period for Seven Calendar-Year Reassessment Intervals | 0.00 | 0.00 |
| 4. In-Line Inspection Launcher/Receiver Safety | 27.4 | 37.5 |
| 5. MAOP Exceedance Reports | 0.00 | 0.00 |
| 6. Strengthening requirements for assessment methods | 0.00 | 0.00 |
| 7. Assessments outside HCAs | 5,482 | 4,713 |
| 8. Related Records Provisions | 0.00 | 0.00 |
| Total | 31,357 | 32,650 |

## II. Background

### *A. Detailed Overview*

Introduction

Recent significant growth in the nation's production and use of natural gas is placing unprecedented demands on the Nation's pipeline system, underscoring the importance of moving this energy product safely and efficiently. Changing spatial patterns of natural gas production and use and an aging pipeline network has made improved documentation and data collection increasingly necessary for the industry to make reasoned safety choices and for preserving public confidence in its ability to do so. Congress recognized these needs when passing the 2011 Pipeline Safety Act, calling for an examination of issues pertaining to the safety of the Nation's pipeline network, including a thorough application of the risk-based integrity assessment, repair, and validation system known as IM.[10]

This final rule advances the goals established by Congress in the 2011 Pipeline Safety Act and is consistent with the emerging needs of the natural gas pipeline system. This final rule also advances the important discussion about the need to adapt and expand risk-based safety practices. As some severe pipeline incidents have occurred in areas outside HCAs[11] where the application of IM principles are not required, and as gas pipelines continue to experience failures from causes that IM was intended to address, this conversation is increasingly important.

This final rule strengthens IM requirements, including to ensure operators select the appropriate inspection tool or tools to address the pertinent identified threats to their pipeline segments, and clarifies and expands recordkeeping requirements to ensure operators have and retain the basic physical and operational attributes and characteristics of their pipelines. Further, this final rule establishes requirements to periodically assess pipeline segments in locations outside of HCAs where the surrounding population is expected to potentially be at risk from an incident, which are defined in the rule as MCAs. Even though these pipeline segments are not within currently defined HCAs, they could be located in areas with significant populations. This change facilitates prompt identification and remediation of potentially hazardous defects while still allowing operators to make risk-based decisions on where to allocate their maintenance and repair resources.

Natural Gas Infrastructure Overview

The U.S. natural gas pipeline network is designed to transport natural gas to and from most locations in the lower 48 States. Approximately two-thirds of the lower 48 States depend almost entirely on the interstate transmission pipeline system for their supply of natural gas.[12] One can consider the Nation's natural gas pipeline infrastructure as three interconnected parts—gathering, transmission, and distribution—that together transport natural gas from the production field, where gas is extracted from underground, to its end users, where the gas is used as an energy fuel or chemical feedstock. This final rule applies only to gas transmission lines and does not address gas gathering or natural gas distribution infrastructure and its associated issues. Currently, there are over 300,000 miles of onshore gas transmission pipelines throughout the U.S.[13]

Transmission pipelines primarily transport natural gas from gas treatment plants and gathering systems to bulk customers, local distribution networks, and storage facilities. Transmission pipelines can range in size from several inches to several feet in diameter. They can operate over a wide range of pressures, from a relatively low 200 pounds per square inch gage (psig) to

[10] The IM regulations specify how pipeline operators must identify, prioritize, assess, evaluate, repair, and validate the integrity of gas transmission pipelines in HCAs that could, in the event of a leak or failure, affect high consequence areas in the United States. These areas include certain populated and occupied areas. See § 192.903.

[11] HCAs are defined at § 192.903. There are two methods that can be used to determine and HCA, the specific differences of which we do not address here. Very broadly and regardless of which method used, operators must calculate the potential impact radius for all points along their pipelines and evaluate corresponding impact circles to identify what populations are contained within each circle. Potential impact circles with 20 or more structures intended for human occupancy, or those circles with ''identified sites'' such as stadiums, playgrounds, office buildings, and religious centers, are defined as HCAs.

[12] U.S. Department of Energy, ''Appendix B: Natural Gas,'' *Quadrennial Energy Review Report: Energy Transmission, Storage, and Distribution Infrastructure,* p. NG–28, April 2015.

[13] U.S. DOT Pipeline and Hazardous Materials Safety Administration Data as of 4/26/2018.

over 1,500 psig. They can be hundreds of miles long, and can operate within the geographic boundaries of a single State, or cross one or more State lines.

Regulatory History

PHMSA and its State partners regulate and enforce the minimum Federal safety standards authorized by statute [14] and codified in the PSR for jurisdictional [15] gas gathering, transmission, and distribution systems.

Federal regulation of gas pipeline safety began in 1968 with the creation of the Office of Pipeline Safety and the passage of the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 90–481). The Office of Pipeline Safety issued interim minimum Federal safety standards for gas pipeline facilities and the transportation of natural and other gas by pipeline on November 13, 1968, and subsequently codified broad-based gas pipeline regulations on August 19, 1970 (35 FR 13248). The PSR were revised several times over the following decades to address different aspects of natural gas transportation by pipeline, including construction standards, pipeline materials, design standards, class locations, corrosion control, and MAOP.

In the mid-1990s, following models from other industries such as nuclear power, PHMSA started to explore whether a risk-based approach to regulation could improve safety of the public and reduce damage to the environment. During this time, PHMSA found that many operators were performing forms of IM that varied in scope and sophistication but that there were no uniform standards or requirements.

PHMSA began developing minimum IM regulations for both hazardous liquid and gas transmission pipelines in response to a hazardous liquid accident in Bellingham, WA, in 1999 that killed 3 people and a gas transmission incident in Carlsbad, NM, in 2000 that killed 12. PHMSA finalized IM regulations for gas transmission pipelines in a 2003 final rule.[16] The IM regulations are intended to provide a structure to operators to focus resources on improving pipeline integrity in the areas where a failure would have the greatest impact on public safety. The IM final rule accelerated the integrity assessment of pipelines in HCAs, improved IM systems, and improved the government's ability to review the adequacy of IM plans.

The IM regulations require that operators conduct comprehensive analyses to identify, prioritize, assess, evaluate, repair, and validate the integrity of gas transmission pipelines in HCAs. Approximately 7 percent of onshore gas transmission pipeline mileage is located in HCAs.[17] PHMSA and State inspectors review operators' IM programs and associated records to verify that the operators have used all available information about their pipelines to assess risks and take appropriate actions to mitigate those risks.

Since the implementation of the IM regulations, sweeping changes in the natural gas industry have caused significant shifts in supply and demand, and the Nation's pipeline network faces increased pressures from these changes as well as from the increased exposure caused by a growing and geographically dispersing population. Also, long-identified pipeline safety issues, some of which IM set out to address, remain problems. A records search following the PG&E incident required by Congress in the 2011 Pipeline Safety Act, showed that some pipeline operators do not have the records they need to substantiate the current MAOP of their pipelines, as required under existing regulations, and lacked other critical information needed to properly assess risks and threats and perform effective IM.[18] PHMSA's inspection experience indicates pipelines continue to be vulnerable to failures stemming from outdated construction methods or materials. Finally, some severe pipeline incidents have occurred in areas outside HCAs where the application of IM principles is not required.

Following the significant pipeline incident in 2010 at San Bruno, CA, in which 8 people died and more than 50 people were injured, Congress charged PHMSA with improving the IM regulations. Additionally, the NTSB and Government Accountability Office (GAO) issued recommendations regarding IM.[19] Comments in response to a 2011 ANPRM on these and related topics suggested there were many common-sense improvements that could be made to IM, as well as a clear need to extend certain IM provisions to pipelines outside of HCAs that were not covered by the IM regulations. A large portion of the transmission pipeline industry has voluntarily committed to extending certain IM provisions to non-HCA pipe, which demonstrates a common understanding of the need for this strategy.

Through this final rule, PHMSA is making improvements to IM and is improving the ability of operators to engage in a long-range review of risk management and information needs, while also accounting for a changing landscape and a changing population.

Supply Changes

The U.S. natural gas industry increased production dramatically between 2005 and 2017, from 19.5 trillion cubic feet per year to 28.8 trillion cubic feet per year.[20] This growth was enabled by the production of ''unconventional'' natural gas supplies using improved technology to extract gas from low permeability shales. The increased use of directional drilling [21] and improvements to a long-existing industrial technique—hydraulic fracturing,[22] which began as an experiment in 1947—made the recovery of unconventional natural gas easier and economically viable. This has led to decreased prices and increased use of natural gas, despite a reduction in the production of conventional natural gas of about 14 billion cubic feet per day. Unconventional shale gas production now accounts for nearly 70 percent of overall gas production in the U.S.

Growth in unconventional natural gas production has shifted production away from traditionally gas-rich regions towards inland shale gas regions. To illustrate, in 2004, wells in the Gulf of Mexico's produced 5,066,000 million

[14] Title 49, United States Code, Subtitle VIII, Pipelines, Sections 60101, *et. seq.*

[15] Typically, onshore pipelines involved in the ''transportation of gas''—see 49 CFR 192.1 and 192.3 for detailed applicability.

[16] ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines).'' 68 FR 69778; December 15, 2003. Corrected April 6, 2004 (69 FR 18227) and May 26, 2004 (69 FR 29903).

[17] Per PHMSA's 2018 Annual Report, accessed April 9, 2019, 20,435 of the 301,227 miles of gas transmission pipelines are classified as being in HCAs.

[18] An effective IM program requires operators to analyze many data points regarding threats to their systems in addition to pipe attributes, including, but not limited to, construction data (year of installation, pipe bending method, joining method, depth of cover, coating type, pressure test records, etc.), operational data (maximum and minimum operating pressures, leak and failure history, corrosion monitoring, excavation data, corrosion surveys, ILI data, etc.).

[19] More information on the NTSB recommendations being addressed in this rule are discussed in further detail in Section II. D. of this document ''National Transportation Safety Board Recommendations.'' See also, GAO–06–946, Natural Gas Pipeline Safety: Integrity Management Benefits Public Safety, but Consistency of Performance Measures Should be Improved,'' September 8, 2006.

[20] U.S. Department of Energy, Energy Information Administration, ''U.S. Natural Gas marketed Production'' *https://www.eia.gov/dnav/ng/hist/n9050us2a.htm,* accessed 6/28/18.

[21] Directional drilling is the practice of drilling non-vertical wells.

[22] The extraction of oil or gas deposits performed by forcing open fissures in subterranean rocks by introducing liquid at high pressures.

cubic feet of natural gas per year (Mcf/year), approximately 20 percent of the Nation's natural gas production at the time. By 2016, that number had fallen to 1,220,000 Mcf/year, and approximately 4 percent of natural gas production in the U.S. During that same period, Pennsylvania's share of production grew from 197,217 Mcf/year to 5,463,783 Mcf/year, or approximately 17 percent of total natural gas production in the U.S.[23] [24] An analysis conducted by the Department of Energy's Office of Energy Policy and Systems Analysis projects that the most significant increases in production through 2030 will occur in the Marcellus and Utica Basins in the Appalachian Basin,[25] and natural gas production is projected to grow from the 2015 levels of 66.5 Bcf/d to more than 93.5 Bcf/d.[26]

Demand Changes

The increase in domestic natural gas production has led to lower average natural gas prices.[27] In 2004, the outlook for natural gas production and demand growth was weak. Monthly average spot prices at Henry Hub [28] were high based on historic comparison of prices, fluctuating between $4 per million British thermal units (Btu) and $7 per million Btu. Prices rose above $11 per million Btu for several months in both 2005 and 2008.[29] Since 2008, after production shifted to onshore unconventional shale resources, and price volatility fell away following the Great Recession, natural gas has traded between about $2 per million Btu and $5 per million Btu.[30]

These low prices have fueled consumption growth and changes in markets and spatial patterns of consumption. A shift towards natural gas-fueled electric power generation, cleaner than other types of fossil fuels, is helping to serve the needs of the Nation's growing population, and increased gas production and lower domestic prices have created opportunities for international export.

Plentiful domestic natural gas supply and comparatively low natural gas prices have changed the economics of electric power markets.[31] To accommodate recent growth and expected future growth in natural gas-fueled power, changes in pipeline infrastructure will be needed, including flow reversals of existing pipelines; additional lines to gas-fired generators; looping of existing networks, where multiple pipelines are laid parallel to one another along a single right-of-way to increase the capacity of a single system; and, potentially, new pipelines as well.

Increasing Pressures on the Existing Pipeline System Due to Supply and Demand Changes

Despite the significant increase in domestic gas production and the widespread distribution of domestic gas demand, significant flexibility and capacity in the existing transmission system mitigates the level of pipeline expansion and investment required. Some of the new gas production is located near existing or emerging sources of demand, which reduces the need for additional natural gas pipeline infrastructure. In many instances where new natural gas transmission capacity is needed, the network is being expanded by pipeline investments to enhance network capacity on existing lines rather than increasing coverage through new infrastructure. Additionally, operators have avoided building new pipelines by increasing pipeline diameters or operating pressures. In short, the nation's existing pipeline system is facing the brunt of this dramatic increase in natural gas supply and the shifting energy needs of the country.

In cases where use of the existing pipeline network is high, the next most cost-effective solution is to add capacity to existing lines via compression.[32] Compression requires infrastructure investment in the form of more compressor stations along the pipeline route, but it can be less costly, faster, and simpler for market participants in comparison to building a new pipeline. Adding compression, however, raises pipeline operating pressures and can expose previously hidden defects.

New pipeline projects have been proposed to address pending supply constraints and higher prices. However, gaining public acceptance for natural gas pipeline construction has proved to be a substantial challenge. Pipeline expansion and construction projects often face significant challenges in determining feasible right-of-ways and developing community support for the projects.

Data Challenges

Operators and regulators must have an intimate understanding of the threats to, and operations of, their entire pipeline system. Data gathering and integration are important elements of good IM practices, and while operators have made many strides over the years to collect more and better data, several data gaps still exist. Ironically, the comparatively positive safety record of the Nation's gas transmission pipelines to date makes it harder to quantify some of these gaps. Over the 20-year period of 1998–2017, transmission facilities accounted for 50 fatalities and 179 injuries, or about one-sixth to one-seventh of the total fatalities and injuries caused by natural gas pipeline incidents in the U.S.[33] Given the relatively limited number of significant incidents that occur, it can be challenging to project the possible impact of low-probability but high-consequence events. See the RIA included in the public docket for a more detailed analysis of key types of incidents that may be mitigated by this final rule.

On September 9, 2010, a 30-inch-diameter segment of an intrastate natural gas transmission pipeline owned and operated by PG&E ruptured in a residential area of San Bruno, CA. The natural gas that was released subsequently ignited, resulting in a fire that destroyed 38 homes and damaged 70. Eight people were killed, many were injured, and many more were evacuated from the area.

The PG&E incident exposed several problems in the way data on pipeline conditions is collected and managed, showing that the operator had inadequate records regarding the physical and operational characteristics of their pipelines. These records are necessary for the correct setting and validation of MAOP, which is critically

[23] U.S. Department of Energy, Energy Information Administration, ''Gulf of Mexico—Offshore Natural Gas Withdrawals,'' *https://www.eia.gov/dnav/ng/hist/na1060_r3fmtf_2a.htm,* accessed 6/28/18.

[24] U.S. Department of Energy, Energy Information Administration, ''Pennsylvania Natural Gas Gross Withdrawals,'' *https://www.eia.gov/dnav/ng/hist/n9010pa2a.htm,* accessed 6/28/18.

[25] U.S. Department of Energy, ''Appendix B: Natural Gas,'' *Quadrennial Energy Review Report: Energy Transmission, Storage, and Distribution Infrastructure,* p. NG–28, April 2015.

[26] *Id.,* at NG–6.

[27] *Id.,* at NG–11.

[28] Henry Hub is a Louisiana natural gas distribution hub where conventional Gulf of Mexico natural gas can be directed to gas transmission lines running to different parts of the country. Gas bought and sold at the Henry hub serves as the national benchmark for U.S. natural gas prices. (*Id.,* at NG–29, NG–30).

[29] Energy Information Administration, Natural Gas Spot and Futures Prices, *http://www.eia.gov/dnav/ng/ng_pri_fut_s1_m.htm,* retrieved August 2018.

[30] U.S. Department of Energy, ''Appendix B: Natural Gas,'' *Quadrennial Energy Review Report: Energy Transmission, Storage, and Distribution Infrastructure,* p. NG–11, April 2015.

[31] *Id.,* at NG–9.

[32] Gas can be reduced in volume by increasing its pressure. Therefore, operators can pack more gas into their lines if they can increase the pressure of the gas being transported.

[33] PHMSA, Pipeline Incident 20-Year Trends, *http://www.phmsa.dot.gov/pipeline/library/data-stats/pipelineincidenttrends.*

important for providing an appropriate margin of safety to the public.

Much of operator data is obtained through the assessments and other safety inspections required by IM regulations. However, this testing can be expensive, and the approaches to obtaining data that are most efficient over the long term may require significant upfront costs to modernize pipes and make them suitable for automated inspection. As a result, there continue to be data gaps that make it hard to fully understand the risks to and the integrity of the Nation's pipeline system.

To evaluate a pipeline's integrity, operators generally choose between three methods of testing a pipeline: Inline inspection (ILI), pressure testing, and direct assessment (DA). In 2017, PHMSA estimates that about two-thirds of gas transmission interstate pipeline mileage was suitable for ILI, compared to only about half of intrastate pipeline mileage, and therefore, intrastate operators use more pressure testing and DA than interstate operators.

ILIs are performed using tools, referred to as ''smart pigs,'' which are usually pushed through a pipeline by the pressure of the product being transported. As the tool travels through the pipeline, it identifies and records potential pipe defects or anomalies. Because these tests can be performed with product in the pipeline, the pipeline does not have to be taken out of service for testing to occur, which can prevent excessive cost to the operator and possible service disruptions to consumers. Further, unlike pressure testing, ILI does not risk destroying the pipe, and it is typically less costly to perform on a per-unit basis than other assessment methods.

Pressure tests, also known as hydrostatic tests, are used by pipeline operators as a means to determine the integrity (or strength) of the pipeline immediately after construction and before placing the pipeline in service, as well as periodically during a pipeline's operating life. In a pressure test, water or an alternative test medium inside the pipeline is pressurized to a level greater than the normal operating pressure of the pipeline. This test pressure is held for a number of hours to ensure there are no leaks in the pipeline.

Direct assessment is the visual evaluation of a pipeline at a sample of locations along the line to detect corrosion threats, dents, and stress corrosion cracking of the pipe body and seams. In general, corrosion direct assessments are carried out by performing four steps. Operators will review records and other data, then inspect the pipeline through assessments that do not require excavation or use mathematical models and environmental surveys to find likely locations on a pipeline where corrosion is most likely to occur. For external corrosion, operators must use two or more complementary indirect assessment tools, including, for example, close interval surveys, direct current voltage gradient surveys, and alternating current voltage gradient surveys, to determine potential areas of corrosion to examine. For internal corrosion, operators must analyze data to establish whether water was present in the pipe, determine the locations where water would likely accumulate, and provide for a detailed examination and evaluation of those locations. Areas identified where corrosion may be occurring are then excavated, examined visually, and remediated as necessary. Operators also perform a post-assessment on segments where corrosion direct assessments are used to evaluate the effectiveness of the technique and determine re-assessment intervals as needed.[34]

For cracking, operators collect and analyze data to determine whether the conditions for stress corrosion cracking are present, prioritize potentially susceptible segments of pipelines, and select specific sites for examination and evaluation. A DA would then evaluate the presence of stress corrosion cracking and determine its severity and prevalence. Operators are required to repair anomalies, if found, and determine further mitigation requirements as necessary.

Direct assessment can be prohibitively expensive to use on a wide scale and may not give an accurate representation of the condition of lengths of entire pipeline segments when the high expense leads the operator to select an insufficient number of observations. Further, as DA can only be used to validate specific threats, an operator that relies solely on a DA without performing a thorough risk analysis or running multiple tools specific to multiple threats might be leaving other threats unremediated in their pipelines.

Ongoing research and industry response to the ANPRM[35] and NPRM[36] indicate that ILI and spike hydrostatic pressure testing[37] is more effective than DA for identifying pipe conditions that are related to stress corrosion cracking defects. Regulators and operators agree that improving ILI methods as an alternative to hydrostatic testing is better for risk evaluation and management of pipeline safety. Hydrostatic pressure testing can result in substantial costs, occasional disruptions in service, and substantial methane emissions due to the routine evacuation of natural gas from pipelines prior to tests. Further, many operators prefer not to use hydrostatic pressure tests because it can be destructive.[38] ILI testing can obtain data along a pipeline not otherwise obtainable via other assessment methods, although this method also has certain limitations.[39]

This final rule expands the range of permissible assessment methods and incorporates new guidelines to help operators in the selection of appropriate assessment methods. Promoting the use of ILI technologies, combined with further research and development by PHMSA as well as stakeholders to make ILI testing more accurate, is expected to drive innovation in pipeline integrity testing technologies that leads to improved safety and system reliability through better data collection and assessment.

Flow Reversals, Product Changes, and Manufacturing Defects

Significant growth of production outside the Gulf Coast region—especially in Pennsylvania and Ohio[40]—is causing a reorientation of the Nation's transmission pipeline network. The most significant of these changes will require reversing flows on pipelines to move gas from the Marcellus and Utica shale formations to the southeastern Atlantic region and the Midwest.

Reversing a pipeline's flow can cause added stress on the system due to changes in gas pipeline pressure and temperature, which can increase the risk

[34] See PHMSA's fact sheet on DA at *https://primis.phmsa.dot.gov/Comm/FactSheets/FSdirectAssessmentGas.htm.*

[35] ''Pipeline Safety: Safety of Gas Transmission Pipelines—Advanced Notice of Proposed Rulemaking,'' 76 FR 5308; August 25, 2011.

[36] ''Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines,'' 81 FR 20722; April 8, 2016.

[37] A ''spike'' hydrostatic pressure test is typically used to resolve cracks that might otherwise grow during pressure reductions after hydrostatic tests or as the result of operational pressure cycles.

[38] National Transportation Safety Board, ''Pacific Gas and Electric Company; Natural Gas Transmission Pipeline Rupture and Fire; San Bruno, California; September 9, 2010,'' *Pipeline Accident Report NTSB/PAR–11–01,* Page 96, 2011.

[39] For example, ILI tools are ideal for gathering certain information about the physical condition of the pipe, including corrosion, deformations, or cracking. However, ILI technology cannot reliably detect other conditions, such as coating damage or environmental issues.

[40] U.S. Energy Information Administration, ''Annual Energy Outlook 2019,'' p. 78—Dry shale gas production by region. *https://www.eia.gov/outlooks/aeo/pdf/aeo2019.pdf*

of internal corrosion. Occasional failures on natural gas transmission pipelines have followed operational changes that include flow reversals and product changes.[41] Operators have recently submitted proposed flow reversals and product changes on gas transmission lines. In response to this phenomenon, PHMSA issued an Advisory Bulletin in 2014 notifying operators of the potentially significant impacts such changes may have on the integrity of a pipeline and recommended additional actions operators should consider performing before, during, and after flow reversals, product changes, and conversions to service, including notifications, operations and maintenance requirements, and IM requirements.[42]

Data indicates that some pipelines are vulnerable to issues stemming from outdated construction methods or materials. Some gas transmission infrastructure was made before the 1970s using techniques that have proven to contain latent defects due to the manufacturing process. For example, pipe manufactured using low frequency electric resistance welding is susceptible to seam failure. Because these pipelines were installed before the Federal gas regulations were issued, many of those pipes were exempted from certain regulations, most notably the requirement to pressure test the pipeline segment immediately after construction and before placing the pipeline into service. A substantial amount of this type of pipe is still in service.[43] The IM regulations include specific requirements for evaluating such pipe if located in HCAs, but infrequent-yet-severe failures that are attributed to longitudinal seam defects continue to occur. The NTSB's investigation of the PG&E incident in San Bruno determined that the pipe failed due to a similar defect, a fracture originating in the partially welded longitudinal seam of the pipe. According to PHMSA's accident and incident database, between 2010 and 2017, 30 other reportable incidents were attributed to seam failures, resulting in over $18 million of reported property damage.

Protecting the Safety and Integrity of the Nation's Pipeline System Beyond HCAs

The current IM program improves pipeline operators' ability to identify and mitigate the risks to their pipeline systems. IM regulations require that operators adopt procedures and processes to identify HCAs; determine likely threats to the pipeline within the HCA; evaluate the physical integrity of the pipe within the HCA; and repair, remediate, or monitor any pipeline defects found based on severity. Because these procedures and processes are complex and interconnected, effective implementation of an IM program relies on continual evaluation and data integration.

HCAs were first defined on August 6, 2002,[44] providing concentrations of populations with corridors of protection spanning 300, 660, or 1,000 feet, depending on the diameter and MAOP of the particular pipeline.[45] In a later NPRM,[46] PHMSA proposed changes to the definition of a HCA by introducing the concept of a covered segment, which PHMSA defined as the length of gas transmission pipeline that could potentially impact an HCA.[47] Previously, only distances from the pipeline centerline related to HCA definitions. PHMSA also proposed using Potential Impact Circles (PIC), Potential Impact Zones, and Potential Impact Radii (PIR) to identify covered segments instead of a fixed corridor width. The final Gas Transmission Pipeline Integrity Management Rule, incorporating the new HCA definition using the PIR and PIC concepts, was issued on December 15, 2003.[48]

The PG&E incident in 2010 motivated a comprehensive reexamination of gas transmission pipeline safety. In response to the PG&E incident, Congress passed the 2011 Pipeline Safety Act, which directed PHMSA to reexamine many of its safety requirements, including the expansion of IM regulations for transmission pipelines.

Further, both the NTSB and the GAO issued several recommendations to PHMSA to improve its IM program and pipeline safety. The NTSB noted in a 2015 study[49] that IM requirements have reduced the rate of failures due to deterioration of pipe welds, corrosion, and material failures. However, the NTSB noted that pipeline incidents in HCAs due to other factors increased between 2010 and 2013, and the overall occurrence of gas transmission pipeline incidents in HCAs has remained stable. Since 2013 there have been an average of 9 incidents within HCAs, which is below a peak of 12 incidents per year in 2012 and 2013, but still higher than the number of incidents in 2010 and 2011. The NTSB also found many types of basic data necessary to support comprehensive probabilistic modeling of pipeline risks are not currently available.

Looking at Risk Beyond HCAs

PHMSA posed a series of questions to the public in the context of an August 25, 2011, ANPRM titled ''Safety of Gas Transmission Pipelines'' (76 FR 53086), including whether the regulations governing the safety of gas transmission pipelines needed changing. In particular, PHMSA asked whether to add prescriptive language to IM requirements, and whether other issues related to system integrity should be addressed by strengthening or expanding non-IM requirements. PHMSA sought comment on the definition of an HCA and whether additional restrictions should be placed on the use of DA as an IM assessment method. PHMSA also requested comment on non-IM requirements, including valve spacing and installation, corrosion control, and whether regulations for gathering lines needed to be modified.

PHMSA received 103 submissions containing thousands of comments in response to the ANPRM, which are summarized in more detail below. This feedback helped identify a series of proposed improvements to IM, including improvements to assessment goals such as integrity verification, MAOP verification, and material documentation; adjusted repair criteria; clarified protocol for identifying threats,

[41] On September 29, 2013, the Tesoro High Plains pipeline leaked 20,000 barrels of crude oil in a North Dakota field. The location of pressure and flow monitoring equipment had not been changed to account for the reversed flow. On March 19, 2013, Exxon's Pegasus pipeline failed; the flow on that pipeline was reversed in 2006.

[42] ''Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service,'' *ADB PHMSA–2014–0040,* 79 FR 56121; September 18, 2014.

[43] Currently, PHMSA's data shows that roughly 168,000 of the Nation's 301,000 miles of onshore gas transmission pipelines were installed prior to the 1970 requirement for hydrostatic pressure testing. See *https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages.*

[44] ''Pipeline Safety: High Consequence Areas for Gas Transmission Pipelines,'' *Final rule,* 67 FR 50824; August 6, 2002.

[45] The influence of the existing class location concept on the early definition of HCAs is evident from the use of class locations themselves in the definition, and the use of fixed 660 ft. distances, which corresponds to the corridor width used in the class location definition. This concept was later significantly revised, as discussed later, in favor of a variable corridor width based on case-specific pipe size and operating pressure.

[46] ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines),'' *Notice of Proposed Rulemaking,* 68 FR 4278; January 28, 2003.

[47] HCA and PIR definitions are in 49 CFR 192.903.

[48] ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines),'' *Final rule,* 68 FR 69778; December 15, 2003.

[49] National Transportation Safety Board, ''Safety Study: Integrity Management of Gas Transmission Pipelines in High Consequence Areas,'' *NTSB SS–15/01,* January 27, 2015.

risk assessments and management, and prevention and mitigation measures; expanded and enhanced corrosion control; requirements for inspecting pipelines after incidents of extreme weather; and new guidance on how to calculate MAOP in order to set operating parameters more accurately and predict the risks of an incident. PHMSA published an NPRM on April 8, 2016 (81 FR 20722), which is discussed in more detail below.

Many of these aspects of IM have been an integral part of PHMSA's expectations since the inception of the IM program. As specified in the first IM rule, PHMSA expects operators to start with an IM framework, evolve a more detailed and comprehensive IM program, and continually improve their IM programs as they learn more about the IM process and the material condition of their pipelines through integrity assessments.

Section 23 of the 2011 Pipeline Safety Act required PHMSA to have pipeline operators conduct a records verification to ensure that their records accurately reflect the physical and operational characteristics of their pipelines in certain HCAs and class locations, and to confirm the established MAOP of those pipelines. Based on the data received from operators following the records verification, incidents that have occurred in non-HCA areas, and other knowledge gained since the 2011 Pipeline Safety Act was passed, PHMSA has become increasingly concerned that a rupture on the scale of San Bruno, with the potential to cause death and serious injury, as well as damage to the environment or the disruption of commerce, could occur elsewhere on the Nation's pipeline system in both HCA and non-HCA pipeline segments. There have been several recent incidents in non-HCAs that show significant incidents can occur in non-HCAs. For example, on December 14, 2007, two men were driving in a pickup truck on Interstate 20 near Delhi, LA, when a 30-inch gas transmission pipeline owned by Columbia Gulf Transmission Company ruptured. One of the men was killed, and the other was injured.

Further, on December 11, 2012, a 20-inch-diameter gas transmission line operated by Columbia Gas Transmission Company ruptured about 106 feet west of Interstate 77 (I–77) in Sissonville, WV. An area of fire damage about 820 feet wide extended nearly 1,100 feet along the pipeline right-of-way. Three houses were destroyed by the fire, and several other houses were damaged. Reported losses, repairs, and upgrades from this incident totaled over $8.5 million, and major transportation delays occurred. I–77 was closed in both directions because of the fire and resulting damage to the road surface. The northbound lanes were closed for approximately 14 hours, and the southbound lanes were closed for approximately 19 hours while the road was resurfaced, causing delays to both travelers and commercial shipping.

Finally, on April 29, 2016, an incident occurred on a Texas Eastern Transmission Corporation gas transmission line operated by Spectra Energy near Delmont, PA, which is approximately 25 miles away from Pittsburgh, PA. The explosion seriously injured one person, destroyed a house, damaged three other homes and vehicles outside, and caused the evacuation of nine other homes in the area. Even though the pipeline was in a Class 1 rural area, it still had a significant impact on the local population.

The Nation's population is growing, moving, and dispersing, leading to changes in population density that can affect the class location of a pipeline segment, as well as whether it is in an HCA. The definition of HCA is not necessarily an accurate reflection of whether an incident will have an impact on people. Requiring assessment and repair criteria for pipelines that, if ruptured, could pose a threat to areas where any people live, work, or congregate would improve public safety and would improve public confidence in the Nation's natural gas pipeline system.

Some pipeline operators have said they are already moving towards expanding the protections of IM beyond HCAs. In 2012, the Interstate Natural Gas Association of America (INGAA) issued a ''Commitment to Pipeline Safety,'' [50] underscoring its efforts towards a goal of zero incidents, a committed safety culture, a pursuit of constant improvement, and applying IM principles on a system-wide basis. To accomplish this goal, INGAA's members committed to performing actions that include applying risk management beyond HCAs; raising the standards for corrosion management; demonstrating ''fitness for service'' on pre-regulation pipelines; and evaluating, refining, and improving operators' ability to assess and mitigate safety threats. These actions aim to extend protection to people who live near pipelines but not within defined HCAs. Further, this final rule takes important steps toward developing a comprehensive approach for the entire industry by finalizing requirements for assessments outside of HCAs.

This final rule implements risk management standards that most accurately target the safety of communities while also providing sufficient ability to prioritize areas of greatest possible risk and impact.

Given the results of incident investigations, IM considerations, and the feedback from the ANPRM and the NPRM, PHMSA has determined it is appropriate to improve aspects of the current IM program and codify requirements for additional gas transmission pipelines to receive integrity assessments on a periodic basis to monitor for, detect, and remediate pipeline defects and anomalies. In addition, to achieve the desired outcome of performing assessments in areas where people live, work, or congregate, while balancing the cost of identifying such locations, PHMSA based the requirements for identifying those locations on effective processes already being implemented by pipeline operators and that protect people on a risk-prioritized basis.

Establishing integrity assessment requirements for non-HCA pipeline segments is important for providing safety to the public. Although those pipeline segments are not within defined HCAs, they will usually be in populated areas, and pipeline accidents in these areas may cause fatalities, significant property damage, or disrupt livelihoods. This final rule adopts a newly defined definition for MCAs to identify additional non-HCA pipeline segments that would require integrity assessments, thus assuring the timely discovery and repair of pipeline defects in MCA segments that could potentially impact people, property, or the environment. At the same time, operators can allocate their resources to HCAs on a higher-priority basis.

*B. Pacific Gas and Electric Incident of 2010*

On September 9, 2010, a 30-inch-diameter segment of a gas transmission pipeline owned and operated by PG&E ruptured in a residential neighborhood in San Bruno, CA, producing a crater approximately 72 feet long by 26 feet wide. The segment of pipe that ruptured weighed approximately 3,000 pounds, was 28 feet long, and was found 100 feet

[50] Letter from Terry D. Boss, Senior Vice President of Environment, Safety and Operations to Mike Israni, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, dated January 20, 2012, ''*Safety of Gas Transmission Pipelines,* Docket No. PHMSA–2011–0023.'' INGAA represents companies that operate approximately 65 percent of the gas transmission pipelines, but INGAA does not represent all pipeline operators subject to 49 CFR part 192.

south of the crater. Over the course of the incident, 47.6 million standard cubic feet of natural gas was released. The escaping gas ignited, and the resultant fire destroyed 38 homes, damaged another 70, killed 8 people, injured approximately 60 people (10 seriously), destroyed or damaged 74 vehicles, and caused the evacuation of over 300 more people. The initial 911 calls described the fire as a ''gas station explosion'' and a ''possible airplane crash.'' After 91 minutes, PG&E was able to shut off the flow of gas to the rupture site, which allowed firefighters to approach the rupture site and begin containment efforts. Firefighting operations continued for 2 days; more than 900 emergency responders from San Bruno and surrounding areas were part of the emergency response, 600 of which were firefighters and emergency medical services personnel.[51]

The NTSB, in its pipeline accident report for the incident, determined that the probable cause of the accident was PG&E's inadequate quality assurance and control when it relocated the line in 1956 and an inadequate IM program. The NTSB determined that PG&E's IM program was deficient and ineffective because it was based on incomplete and inaccurate pipeline information, did not consider the pipeline's design and materials contribution to the risk of a pipeline failure, and failed to consider the presence of previously identified welded seam cracks as part of its risk assessment. These deficiencies resulted in the selection of an examination method that could not detect welded seam defects and led to internal assessments of PG&E's IM program that were superficial and resulted in no improvements. Ultimately, this inadequate IM program failed to detect and repair or remove the defective pipe section.

The NTSB found that PG&E's inaccurate geographic information system records at the time of the incident indicated that the ruptured segment was constructed from 30-inch-diameter seamless API 5L X42 steel pipe. However, seamless pipe has never been available in 30-inch diameter. According to PG&E employees who testified during the investigation, all 30-inch pipe purchased by PG&E at that time would have been double submerged arc welded, which has been found in cases to be susceptible to weld failure. This inaccuracy was compounded with the discovery that the material code from the journal voucher that PG&E's records were originally composed from erroneously indicated the ruptured segment was X52 grade pipe (52,000 pounds per square inch (psi)), not X42 grade pipe (42,000 psi). X52 pipe has a higher minimum yield strength than X42 pipe,[52] and incorporating such values into MAOP calculations would produce values that would be inconsistent with the pipeline's actual MAOP. PG&E also could not produce any design, material, or construction specifications from the 1956 construction project. In short, no one from PG&E could reliably determine what type of pipe was in the ground that ruptured.

The NTSB also noted that PHMSA's exemption of pipelines installed before 1970 from the regulatory requirement for pressure testing, which likely would have detected the installation defects, was a contributing factor to the accident. When the initial Federal minimum safety standards for natural gas transmission pipelines were finalized in 1970, an exemption was carved out for pre-1970s pipelines from the requirement for a post-construction hydrostatic pressure test. This exemption was not proposed in any of the NPRMs that preceded the initial regulations and was based on an assertion from the Federal Power Commission[53] that ''there are thousands of miles of jurisdictional interstate pipelines installed prior to 1952,[54] in compliance with the then-existing codes, that could not continue to operate at their present pressure levels and be in compliance with [the proposed MAOP determination requirements].''[55] Upon reviewing the operating record of interstate pipeline companies, the Commission found ''no evidence that would indicate a material increase in safety would result from requiring wholesale reductions in the pressure of existing pipelines which have been proven capable of withstanding present operating pressures through actual operation.'' The Office of Pipeline Safety, at the time, determined it ''[did] not now have enough information to determine that existing operating pressures are unsafe,'' and taking into account the statements from the Federal Power Commission, included the ''grandfather'' clause in the final rule to permit the continued operation of pipelines at the highest pressure to which the pipeline had been subjected during the 5 years preceding July 1, 1970.[56] [57] The 5-year limit was prescribed so that operators would be prevented from ''using a theoretical MAOP which may have been determined under some formula used 20, 30, or 40 years ago.''[58]

The NTSB noted in its investigation that the ''grandfathering'' of the ruptured line resulted in missed opportunities to detect the defective pipe, as a hydrostatic pressure test to the prescribed levels for a Class 3 location would likely have exposed the defective pipe that led to the accident. Following the PG&E incident, the California Public Utilities Commission (CPUC) required PG&E and other gas transmission pipeline operators regulated by CPUC to either hydrostatically pressure test or replace certain transmission pipelines with grandfathered MAOPs, stating that gas transmission pipelines ''must be brought into compliance with modern standards for safety'' and that ''historic exemptions must come to an end.''[59] Currently, PHMSA's data shows that roughly 168,000 of the Nation's 301,000 miles of onshore gas transmission pipelines were installed prior to the 1970 requirement for hydrostatic pressure testing.[60]

On April 1, 2014, the Department of Justice indicted PG&E for multiple criminal violations of part 192 for the 2010 incident in San Bruno, CA. The trial began on June 14, 2016, and after a 5 ½ week trial, a Federal jury found PG&E guilty of knowingly and willingly violating 5 sections of PHMSA's IM regulations and obstructing the NTSB investigation.

Specifically, with respect to the Federal Pipeline Safety Regulations, the jury found that between 2007 and 2010, PG&E knowingly and willfully failed to: (1) Gather and integrate existing data and information that could be relevant to identifying and evaluating potential threats on covered pipeline segments; (2) identify and evaluate all potential

[51] National Transportation Safety Board. 2011. *Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010.* Pipeline Accident Report NTSB/PAR–11/01. Washington, DC.

[52] 52,000 psi vs. 42,000 psi.

[53] The predecessor of the Federal Energy Regulatory Commission.

[54] Between 1935 and 1951, the B31 Code only required a pipeline be tested to a pressure of 50 psig in excess of the pipeline's proposed MAOP. The 1970 regulations required pressure testing to 125 percent in excess of the proposed MAOP.

[55] ''Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,'' 35 FR 13248; August 19, 1970.

[56] 35 FR 13248.

[57] This requirement is currently under § 192.619(c).

[58] 35 FR 13248.

[59] ''Decision Determining Maximum Allowable Operating Pressure Methodology and Requiring Filing of Natural Gas Transmission Pipeline Replacement or Testing Implementation Plans;'' California Public Utilities Commission Order; June 9, 2011.

[60] *https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages.*

threats to each covered pipeline segment; (3) include in its baseline assessment plan all potential threats on a covered segment and to select the most suitable assessment method; (4) prioritize high-risk pipeline segments for assessment where certain changed circumstances rendered the manufacturing threats on those segments unstable; and (5) prioritize pipeline segments containing low-frequency ERW pipe or other similar pipe as a high-risk segment for assessment if certain changed circumstances rendered a manufacturing seam threat on that segment unstable.

Congress required PHMSA, per the 2011 Pipeline Safety Act, to issue regulations to confirm the material strength of previously untested natural gas transmission pipelines located in HCAs and operating at a pressure greater than 30 percent of SMYS. Through this final rule, PHMSA is implementing that congressional directive and other safety measures. This final rule will improve the safety and public confidence of the Nation's onshore natural gas transmission pipeline system.

*C. Advance Notice of Proposed Rulemaking*

On August 25, 2011, PHMSA published an ANPRM to seek public comments regarding the revision of the Federal Pipeline Safety Regulations applicable to the safety of gas transmission pipelines. In the 2011 ANPRM, PHMSA requested comments on 122 questions spread through 15 broad topic areas covering both IM and non-IM requirements. Among the issues related to IM that PHMSA considered included whether the definition of an HCA should be revised and whether additional restrictions should be placed on the use of certain pipeline assessment methods. PHMSA also requested comment on non-IM regulations, including whether revised requirements are needed for mainline valve spacing and actuation, whether requirements for corrosion control should be strengthened, and whether new regulations are needed to govern the safety of gas gathering lines and underground natural gas storage facilities. Based on the comments received on several of the ANPRM topics, PHMSA developed proposals for some of those topics in a NPRM that is the basis for this final rule. That NPRM and the comments received, are discussed below. PHMSA did not find it appropriate to address all the topics in a single rulemaking. Those topics that were not discussed further in the NPRM for this final rule have been discussed or will be discussed in other rulemakings.

*D. National Transportation Safety Board Recommendations*

On August 30, 2011, following the issuance of the ANPRM, the NTSB adopted its report on the gas pipeline incident that occurred on September 9, 2010, in San Bruno, CA. On September 26, 2011, the NTSB issued safety recommendations P–11–8 through -20 to PHMSA. Several of the NTSB's recommendations related directly to the topics discussed in the 2011 ANPRM and 2016 NPRM, and they shaped the direction of this final rule. The NTSB recommendations addressed in this final rule include:

- Exemption of Facilities Installed Prior to the Regulations. NTSB Recommendation P–11–14: *Amend Title 49 Code of Federal Regulations 192.619 to repeal exemptions from pressure test requirements and require that all gas transmission pipelines constructed before 1970 be subjected to a hydrostatic pressure test that incorporates a spike test.*''
- Pipe Manufactured Using Longitudinal Weld Seams. NTSB Recommendation P–11–15: ''*Amend Title 49 Code of Federal Regulations Part 192 of the Federal pipeline safety regulations so that manufacturing- and construction-related defects can only be considered stable if a gas pipeline has been subjected to a post-construction hydrostatic pressure test of at least 1.25 times the maximum allowable operating pressure.*''
- Incorporating interstates, highways, etc., into the list of ''identified sites'' that establish a HCA. NTSB Recommendation P–14–1: ''*Revise Title 49 CFR Section 903, Subpart O, Gas Transmission Pipeline Integrity Management, to add principal arterial roadways including interstates, other freeways and expressways, and other principal arterial roadways as defined in the Federal Highway Administration's ''Highway Functional Classification Concepts, Criteria and Procedures'' to the list of ''identified sites'' that establish an HCA.*
- Increase the use of ILI tools. NTSB Recommendation P–15–20: ''*Identify all operational complications that limit the use of in-line inspection tools in piggable pipelines, develop methods to eliminate the operational complications, and require operators to use these methods to increase the use of in-line inspection tools.*''

*E. Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011*

The 2011 Pipeline Safety Act relates directly to the topics addressed in PHMSA's ANPRM of August 25, 2011, and the NPRM issued on April 8, 2016. The related topics and statutory citations include, but are not limited to:

- Section 5(e)—Allow periodic reassessments to be extended for an additional 6 months if the operator submits sufficient justification.
- Section 5(f)—Requires the expansion of IM system requirements, or elements thereof, beyond HCAs, if appropriate.
- Section 23—Requires the reporting of each exceedance of the MAOP that exceeds the build-up allowed for the operation of pressure-limiting or -control devices.
- Section 23—Requires testing to confirm the material strength of previously untested natural gas transmission pipelines and pipelines lacking records that accurately reflect the pipeline's physical and operational characteristics.
- Section 29—Requires consideration of seismicity when evaluating pipeline threats.

*F. Notice of Proposed Rulemaking*

On April 8, 2016, PHMSA published an NPRM seeking public comments on the revision of the Federal Pipeline Safety Regulations applicable to the safety of gas transmission pipelines and gas gathering pipelines (81 FR 20721).[61] When developing the NPRM, PHMSA considered the comments it received from the ANPRM and proposed new pipeline safety requirements and revisions of existing requirements in several major topic areas, including those topics addressing congressional mandates and related NTSB recommendations. A summary of the NPRM proposals and topics pertinent to this rulemaking, the comments received on those specific proposals, and PHMSA's response to the comments received is below under the ''Analysis of Comments and PHMSA Response'' section.

PHMSA determined it could more quickly move a rulemaking that focuses on the mandates from the 2011 Pipeline Safety Act by splitting out the other provisions contained in the NPRM into two other, separate rules. Promptly issuing a final rule focused on mandates will improve safety and respond to Congress, industry, and public safety groups.

[61] *https://www.regulations.gov/document?D=PHMSA-2011-0023-0118.*

As such, not all the topics from the NPRM nor the comments received on those topics are discussed as a part of this rulemaking. PHMSA intends to issue two additional final rules to address the remaining topics from the NPRM.

## III. Analysis of NPRM Comments, GPAC Recommendations, and PHMSA Response

On April 8, 2016, PHMSA published an NPRM (81 FR 20722) proposing several amendments to 49 CFR part 192. The NPRM proposed amendments addressing topiic areas including verification of pipeline material properties, MAOP reconfirmation, IM clarifications, MAOP exceedance reports, ILI launcher and receiver safety, assessing areas outside of HCAs, and recordkeeping. The comment period for the NPRM ended on July 7, 2016. PHMSA received approximately 300 submissions containing thousands of comments on the NPRM. Submissions were received from groups representing the regulated pipeline industry; groups representing public interests, including environmental groups; State utility commissions and regulators; members of Congress; specific pipeline operators; and private citizens.

Some of the comments PHMSA received in response to the NPRM were comments beyond the scope or authority of the proposed regulations. The absence of amendments in this proceeding involving other pipeline safety issues (including several topics listed in the ANPRM) does not mean that PHMSA determined additional rules or amendments on those other issues are not needed. Such issues may be the subject of other existing rulemaking proceedings or future rulemaking proceedings.

The remaining comments reflect a wide variety of views on the merits of particular sections of the proposed regulations. PHMSA read and considered all the comments posted to the docket for this rulemaking.

The Technical Pipeline Safety Standards Committee, commonly known as the Gas Pipeline Advisory Committee (GPAC; the committee), is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas pipelines.[62] The GPAC is one of two pipeline advisory committees that focus on technical safety standards that were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1–16) and section 60115 of the Federal Pipeline Safety Statutes (49 U.S.C. Chap. 601). Each committee consists of 15 members, with membership divided among Federal and State agencies, regulated industry, and the public. The committees consider the ''technical feasibility, reasonableness, cost-effectiveness, and practicability'' of each proposed pipeline safety standard and provide PHMSA with recommended actions pertaining to those proposals.

Due to the size and technical detail of this rulemaking, the GPAC met five times to discuss this rulemaking throughout 2017 and 2018.[63] During those meetings, the GPAC considered the specific regulatory proposals of the NPRM and discussed various comments made on the NPRM's proposal by stakeholders, including the pipeline industry at large, public interest groups, and government entities. To assist the GPAC in its deliberations, PHMSA presented a description and summary of the major proposals in the NPRM and the comments received on those issues. PHMSA also assisted the committee by fostering discussion and developing recommendations by providing direction on which issues were most pressing.

For the proposals finalized in this rulemaking, the committee came to consensus when voting on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the NPRM's provisions. In many instances, the committee recommended changes to certain proposals that the committee found would make certain proposals more feasible, reasonable, cost-effective, or practicable.

The substantive comments received on the NPRM as well as the GPAC's recommendations are organized by topic below and are discussed in the appropriate section with PHMSA's response and resolution to those comments.

### *A. Verification of Pipeline Material Properties and Attributes—§ 192.607*

#### *i.—Applicability*

1. Summary of PHMSA's Proposal

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require the verification of records used to establish MAOP to ensure they accurately reflect the physical and operational characteristics of the pipelines and to confirm the established MAOP of gas transmission pipelines. Since 2012, operators have submitted information indicating that a portion of transmission pipeline segments do not have adequate records to establish MAOP or that accurately reflect the physical and operational characteristics of the pipeline. Therefore, PHMSA determined that additional regulations are needed to implement this requirement of the 2011 Pipeline Safety Act. Specifically, PHMSA proposed that operators conduct tests and other actions needed to confirm and document the physical and operational characteristics for those pipeline segments where adequate records are not available, and PHMSA proposed standards for performing these actions. PHMSA sought to appropriately address pipeline risk without extending the requirement to all pipelines where risk and potential consequences are not as significant, such as pipelines in remote, sparsely-populated areas. As a result, PHMSA proposed criteria that would require material properties verification for higher-risk locations through a new § 192.607; specifically, by adding requirements for the verification of pipeline material properties for existing onshore, steel, gas transmission pipelines that are located in HCAs or Class 3 or Class 4 locations.

2. Summary of Public Comment

Several citizen and public safety groups, including Pipeline Safety Trust (PST), Pipeline Safety Coalition, National Association of Pipeline Safety Representatives (NAPSR), Coalition to Reroute Nexus, Earthworks, and The Michigan Coalition to Protect Public Rights-of-Way, supported the proposed provisions for establishing adequate material properties documentation and records. Some of these groups noted that the need for this section in the regulations would suggest poor operator implementation of the IM requirements since the inception of subpart O back in 2003.

Trade associations and pipeline industry entities were largely opposed to the material properties verification requirements for several reasons outlined below.

Many trade association and pipeline industry commenters expressed concern that the material properties verification requirements were potentially retroactive. American Petroleum Institute (API) and American Gas Association (AGA) asserted that this proposal would require operators to document and verify the material properties of existing pipelines beyond

[62] 49 U.S.C. 60115.

[63] Specifically, the GPAC met on January 11–12, 2017; June 6–7, 2017; December 14–15, 2017; March 2, 2018; and March 26–28, 2018. Information on these meetings can be found at *regulations.gov* under docket PHMSA–2011–0023 and at PHMSA's public meeting page: *https://primis.phmsa.dot.gov/meetings/*.

what was required by the regulations that were in place at the time those pipelines were put into service. These commenters stated that this retroactive requirement extends beyond the congressional authority provided to PHMSA. Several commenters, including AGL Resources, Dominion East Ohio, and New Jersey Natural Gas, expressed concern with the proposed provisions for verifying specific physical characteristics of pipelines, fittings, valves, flanges, and components for existing transmission pipelines. These stakeholders stated that it might be impossible to achieve ''reliable, traceable, verifiable, and complete'' records on a retroactive basis for existing pipelines. Some commenters, including AGA, stated that a pipeline's MAOP should be considered confirmed and there should be no need to further document material properties to verify the MAOP if operators had a pressure test record of a test conducted at 1.25 times MAOP for the pipeline segment.

Commenters also expressed concern about PHMSA's proposed new references to the material properties verification requirements under § 192.607 throughout part 192, which could be interpreted as being applicable not only to a subset of transmission pipelines but also to distribution pipelines. Commenters stated that PHMSA did not provide justification within the NPRM for applying material properties verification requirements to distribution systems, and such requirements would significantly impact distribution systems. These commenters requested that PHMSA explicitly exclude distribution pipelines from the proposed material properties verification requirements. Similarly, some commenters urged PHMSA to restrict these requirements only to gas transmission lines operating at greater than 30 percent SMYS based on the premise that lines operating below 30 percent SMYS, in most cases, tend to leak before rupture and are therefore less risky to the public. Additionally, commenters suggested that PHMSA review the various cross-references in the NPRM and eliminate those that would expand the applicability of the material properties verification requirements beyond onshore steel gas transmission pipelines in HCAs and Class 3 and Class 4 locations.

Some commenters recommended changing the size limit for small components that might trigger the material properties verification requirements from greater-than-or-equal-to 2 inches to greater-than 2 inches. A further comment on components discussed how the material properties verification provisions, as proposed, require the operator to know the weld-end bevel conditions for in-service valves and flanges. Operators noted, however, that once a weld-end is welded to a piece of pipe or other component, there is no method that can be employed to determine the condition of that bevel. Accordingly, the commenters requested this requirement be deleted or clarified. There was also a comment to delete the sampling requirement and not perform material properties verification if, when the applicable pipeline is excavated for repairs, a repair sleeve is installed. Other commenters felt that the proposed material properties verification requirements would not deliver clear, identifiable safety benefits and would lead to several unintended consequences that would decrease the integrity of pipeline systems and cause energy supply disruption. Accordingly, these commenters suggested PHMSA withdraw the proposed requirements for material properties verification.

Multiple commenters also expressed concerns that the revised provisions for establishing MAOP under § 192.619, specifically the requirement for operators to maintain all records necessary to establish and document a pipeline's MAOP as long as the pipeline remains in service, would impose extensive new recordkeeping requirements applicable to operators of distribution pipelines, including retroactive recordkeeping requirements. Commenters requested that PHMSA clarify that the new recordkeeping requirements in § 192.619(f) are applicable only to gas transmission pipelines.

Pipeline industry entities also provided comments on the relationship of the material properties verification requirements in § 192.607 and the MAOP reconfirmation requirements in § 192.624. The Gas Piping Technology Committee (GPTC) suggested that the proposed material properties verification requirements be revised to include an option of using the provisions of § 192.619(a)(1) for establishing MAOP when traceable, verifiable, and complete material property records are not available for calculating design pressure. Similarly, commenters suggested operators should be allowed to establish design yield strengths for unknown pipe grade as described at § 192.107(b)(1). Xcel Energy also stated that if an operator has previously established MAOP as per the § 192.619(a)(2) strength test requirements or will do so per the proposed § 192.624 methodology for pressure test or pressure reduction, the verification of pipeline material proposed in § 192.607 is not necessary for the purpose of ensuring safe operation.

Over the course of the meetings on June 7, 2017, and December 14, 2017, the GPAC had a robust discussion regarding the applicability of the material properties verification requirements. More specifically, the GPAC discussed the fact that two separate activities drive the need for material properties verification: (1) MAOP reconfirmation for pipelines lacking traceable, verifiable, and complete records to support the pipeline's current MAOP; and (2) the application of IM principles, especially where anomaly response and remediation calculations are concerned. The GPAC believed these aspects needed to be addressed separately in the final rule.

Subsequently, on December 14, 2017, the GPAC recommended that PHMSA modify the proposed rule by removing the applicability criteria of the material properties verification requirements and make material properties verification a procedure for obtaining missing or inadequate records or otherwise verifying pipeline attributes if and when required by MAOP reconfirmation requirements or by other code sections. In discussing the issue, the GPAC recognized that the broad applicability of the material properties verification requirements in the proposed rule was PHMSA's attempt to address the issue of inadequate records for MAOP verification, IM requirements and standard pipeline operations. The GPAC believed amending the proposed rule to remove the proposed applicability and instead explicitly refer back to the material properties verification requirements, when needed, in various regulatory sections, would more closely follow Congress' direction in the 2011 Pipeline Safety Act.

This change would also obviate the need for operators to create a material properties verification program plan per the originally proposed requirements, so the GPAC recommended PHMSA remove that requirement from the rule. Further, the committee recommended during a later meeting that PHMSA consider modifying the rule in both §§ 192.607 and 192.619 to clarify that the material properties verification requirements apply to onshore steel gas transmission lines and not to distribution or gathering pipelines.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the scope and requirements for

reconfirming the material properties of pipelines with unknown or undocumented properties. PHMSA agrees that the need for this rule is caused, in part, by poor implementation of existing IM requirements. However, PHMSA disagrees that the requirements would not deliver safety benefits or would lead to decreased integrity of pipeline systems and cause energy supply disruption. The basic knowledge of pipeline material properties is essential to pipeline safety.

PHMSA disagrees that material properties verification is not needed if the pipeline segment has been pressure tested to 1.25 times MAOP. Other reasons for needing documented, confirmed material properties (*e.g.,* wall thickness, yield strength, and seam type) include IM program requirements, implementation of pipe repair criteria and determination of the design pressure of the pipeline segment. This rule supplements existing IM requirements by providing operators a method to reconfirm material properties without necessarily performing destructive testing of the pipe material. Operators can use this method in their IM programs, to reconfirm MAOP where needed, to implement repair requirements, and to otherwise comply with part 192 where necessary. Indeed, PHMSA hopes that operators will use this method for material properties verification even when not specifically required by part 192 because it provides a common-sense, opportunistic, and practical approach for gathering the records necessary to substantiate safe MAOPs, properly implement IM, and otherwise ensure the safe operation of the nation's pipeline network.

PHMSA also disagrees that material properties verification is only needed for pipeline segments operating at pressure greater than 30 percent of SMYS. IM requirements apply to all gas transmission pipeline segments in HCAs, including those that operate at less than 30 percent of SMYS. Moreover, the gas transmission subpart O integrity management regulations at § 192.917(b), *Data gathering and integration,* require operators to gather pipe attributes including pipe wall thickness, diameter, seam type and joint factor, manufacturer, manufacturing date, and material properties. These physical properties and attributes are explicitly outlined in ASME/ANSI B31.8S—2004 Edition, section 4, table 1—Data Elements for Prescriptive Pipeline Integrity Program, which is incorporated by reference in § 192.7.

PHMSA did not intend that the requirements proposed in § 192.607 would be retroactive or would apply to distribution or gathering lines. Therefore, PHMSA is clarifying the final rule to assure that the provisions finalized in § 192.607 are not retroactive [64] and apply only to transmission lines. However, PHMSA believes that operators with IM programs that are properly following subpart O, specifically § 192.917(b), should already have this pipe information.

Regarding material properties verification for non-line pipe components, PHMSA is revising this final rule to apply the requirements to components greater than 2 inches and is removing the requirement to know the weld-end bevel conditions. PHMSA agrees with the GPAC members who commented that 2-inch pipe is not used in mainline applications and need not be subject to additional regulatory requirements to maintain safety. Also, fittings and flanges will have an ANSI class rating that will confirm whether the components meet or exceed the MAOP of the pipeline, so further regulatory requirements for components under 2 inches are not necessary to maintain safety.

To further address comments and the GPAC recommendations related to the scope and applicability of the material properties verification requirements, PHMSA is modifying this final rule to address MAOP reconfirmation and material properties verification separately from the application of IM principles. PHMSA believes this change will improve the organization of the rule. PHMSA is accomplishing this by removing the applicability criteria of the material properties verification requirements and making material properties verification a procedure for obtaining records for physical pipeline properties and attributes that are not documented in traceable, verifiable, and complete records or otherwise verifying physical pipeline properties and attributes when required by MAOP reconfirmation requirements, IM requirements, repair requirements, or other code sections. This obviates the need for all operators to create a material properties verification program plan per the originally proposed requirements, so PHMSA is removing that requirement from the rule as well. Instead, only operators who do not have traceable, verifiable, and complete records will be required to create such a plan.

*A. Verification of Pipeline Material Properties and Attributes—§ 192.607*

*ii.—Method*

1. Summary of PHMSA's Proposal

The conventional method for determining the properties of unknown steel pipe material is to cut test specimens known as ''coupons'' out of the pipe and perform destructive testing. Because of the large amount of pipe operators reported in Annual Report submissions for which there are unknown or inadequately documented properties, the cost of such a conventional approach would likely be onerous. Therefore, PHMSA proposed standards in § 192.607 by which operators could develop a material properties verification plan and use an opportunistic sampling technique to re-constitute and document material properties in a more cost-effective manner. More specifically, PHMSA proposed to allow operators to use recently developed technology to perform *in situ,* non-destructive examinations for determining the properties of unknown steel pipe material.

While PHMSA acknowledged in the preamble of the NPRM that such techniques may not be possible in every situation, PHMSA stated that it was aware that this option is already being widely deployed in the pipeline industry. Secondly, PHMSA proposed to allow operators to determine pipe properties at a sampling of similar locations and apply those results to the entire population of pipeline segments. PHMSA proposed to allow operators to take advantage of opportunities when the pipeline is exposed for other reasons, such as during maintenance and repair excavations, by requiring that material properties be verified whenever the pipe is exposed. This would reduce the number of excavations that might otherwise be required. Excavations are a large portion of the cost of re-constituting material properties for unknown pipe.

2. Summary of Public Comment

Several commenters suggested that the data required by the material properties verification process proposed by PHMSA can be obtained only through destructive pipe testing. These commenters asserted that the proposed requirements would lead to unnecessary service outages, increased methane emissions, and increased personnel

[64] The material properties verification requirements are not retroactive as they mandate the creation and retention of records as operators execute the methodology in § 192.607 on a prospective basis. Operators who have not verified their records in accordance with this methodology before the effective date of this rule will not be subject to enforcement action based on § 192.607. After the effective date of the rule, operators with missing or inadequate records must follow the verification methodology in § 192.607.

safety risks due to unnecessary excavation activities. Black Hills Energy stated that their pipeline system consists of mainly smaller-diameter transmission pipelines and that the proposed provisions would force them to take lines out of service to perform costly cutouts. API asserted that the expense and risk required for the excavations necessary to comply with the proposed provisions outweigh the value of obtaining and documenting material pipe properties. Some commenters suggested that it would be less costly for operators to simply replace pipe rather than obtain the material properties for pipe already in the ground. A commenter asserted that the proposed requirements would require unnecessary breaching of the pipeline coating, which is important for effective cathodic protection. API suggested that rather than requiring operators to gather documentation on material properties that may only be of marginal value for assessing pipeline safety, PHMSA should require a combination of hydrostatic pressure testing and ILI. API stated that, as opposed to the proposed rule's focus on the precise documentation of materials, this would appropriately shift the emphasis of the proposed regulations to confirming MAOP and away from material properties verification.

Several commenters stated that some of the data that PHMSA proposed operators verify is unnecessary for MAOP reconfirmation or other operational reasons. For example, the Interstate Natural Gas Association of America (INGAA) stated that several of the data elements that would need to be verified pursuant to the proposed material properties verification requirements are unnecessary for integrity management-related activities. Commenters suggested that PHMSA limit the required records to what is needed to calculate design pressure in order to determine MAOP. Commenters noted that the proposed requirements would require testing for stress corrosion cracking (SCC) in all cases, and that the requirement should be limited to only pipelines that are susceptible to SCC. Some commenters disagreed with the requirement to determine and keep a record for the chemical composition of steel transmission pipeline segments installed prior to the effective date of the final rule, suggesting that this information has not been previously required. Another commenter stated that the basis for having accurate chemical composition records is unclear. PG&E recommended that PHMSA recognize that chemical composition and manufacturing specifications provide limited information that can be used to evaluate the safety of an existing pipeline system. Piedmont Natural Gas stated that any requirement to retroactively obtain ultimate tensile strength and chemical composition is unnecessarily burdensome and detracts from the ultimate goal of pipeline safety by diverting valuable resources away from other risk-reduction efforts. A similar comment asserted there was no benefit in determining pipeline chemical compositions, as there is a high probability that many pipelines that might otherwise have adequate material documentation would fail the recordkeeping requirements because of a lack of existing chemical composition records and would subsequently be subject to the entire material properties verification process.

Pipeline industry entities also commented on the proposed sampling and testing requirements that would occur during excavations. Commenters asserted that the sampling requirements should be removed, and the number of excavations should not be specified. One commenter stated that the minimum number of excavations should be determined by the operator in their material properties verification plan and through statistical analysis aimed at achieving targeted confidence levels. Texas Pipeline Association (TPA) stated that there is no technical justification for the number of material properties tests being required at each test location by the proposed rule, and that the requirement of five tests in each circumferential quadrant for non-destructive tests and one test in each circumferential quadrant for destructive tests is unsupported in the proposal. TPA further stated that they are unaware of any indication that there is great variability in material properties within the body of a pipe, and that presently, material properties verification involves a single test per cylinder. Additionally, commenters stated this requirement could be unnecessarily costly and have a negative impact on pipeline safety, as the integrity of the pipeline would need to be compromised to perform these evaluations and a new joint of pipe would need to be welded onto the existing pipeline. Lastly, Spectra Energy Partners objected to the requirement that non-destructive testing be validated with unity plots comparing the results from non-destructive and destructive testing. They stated that this severely limits the value of non-destructive testing since the operator will have to remove samples for destructive testing to create the unity plots.

CenterPoint Energy stated that the definition of excavation is unclear, and that pipe may be excavated to a point for many operational activities, including spotting for construction safety and installing cathodic protection tests or current source wires. CenterPoint Energy stated that they do not view these types of excavations as opportunities for material properties verification data gathering because that would require the full exposure of a pipeline segment and the removal of good coating from the pipe. Another commenter suggested that confidence specifications for non-destructive testing would add significant cost due to inherently inaccurate test results.

Similarly, there were comments that encouraged consistency between the material properties verification requirements and the requirements for recordkeeping for materials, pipe design, and pipeline components. These comments suggested that inconsistencies between the documentation and the recordkeeping requirements could create scenarios where operators meet the recordkeeping requirements but do not have adequate documentation to prevent the material properties verification requirements from triggering.

Some commenters opposed the proposed requirement to obtain a ''no objection'' letter from PHMSA in order to use a new or other technology. PG&E recommended that PHMSA provide additional regulatory language to allow an operator to proceed with the new technology if a ''no objection letter'' to PHMSA is not received within 45 days prior to the planned use of technology. They stated that operators put in considerable time to set up contracts, schedule work, acquire permits, and that waiting on an approval or disapproval from PHMSA can dramatically impact schedule and costs. Further, commenters suggested that PHMSA's enforcement and regulatory procedures do not provide for ''no objection'' letters, and adding a new process that is not well-defined could cause additional confusion.

AGA proposed an alternative approach to material properties verification, MAOP reconfirmation, and integrity assessments outside of HCAs, which other pipeline industry entities supported. The approach included requiring operators to either pressure test or utilize an alternative technology that is determined to be of equal effectiveness on high-risk gas transmission pipelines that do not have

a record of a subpart J pressure test or are currently utilizing the grandfather clause for MAOP determination (§ 192.619(c)). AGA suggested a three-tiered approach that prioritized pipelines located in HCAs and operating at pressures greater than 30 percent SMYS. The approach also included the use of ILI tools on all gas transmission pipelines that are able to accommodate inspection by means of an instrumented ILI tool. The ILI tool used would be qualified to find defects that would fail a subpart J pressure test. Commenters stated that this alternative approach is simpler and would allow operators to focus resources on the areas of highest risk within pipeline systems. In conjunction with AGA's approach, commenters recommended including language that would allow the use of advanced ILI and non-destructive evaluations to comply with the proposed material properties verification requirements.

Certain commenters also suggested PHMSA provide a deadline by which operators must implement their material properties verification plan, as it was unclear in the proposal. Following committee discussion and PHMSA feedback, industry groups also recommended to allow operators to use their own statistical sampling plans when undertaking material properties verification rather than have PHMSA specify the number of samples that must be obtained.

At the GPAC meeting on December 14, 2017, the committee recommended that PHMSA modify the method for material properties verification by clarifying that operators are only required to confirm attributes pertinent to the goal of MAOP reconfirmation, integrity management, or other reasons when the material properties verification is being performed. The GPAC also recommended that PHMSA require operators keep records developed using the material properties verification method. The GPAC recommended that PHMSA retain the opportunistic approach of obtaining unknown or undocumented material properties when excavations are performed for repairs or other reasons, using a one-per-mile standard proposed by PHMSA, but allow operators to propose an alternative statistical approach and submit a notification to PHMSA with justification for their method. The GPAC also recommended that if operators notify PHMSA of an alternative sampling approach, and the operator does not receive an objection letter from PHMSA within 90 days of such a notification, the operator can proceed with their chosen method unless PHMSA notifies the operator that additional review time or additional information from the operator is needed for PHMSA to complete its review.

Similarly, the committee recommended PHMSA delete specified program requirements for how to address sampling failures and replace that with a requirement for operators to determine how to deal with sample failures through an expanded sample program that is specific to their system and circumstances. They further recommended that PHMSA require operators to notify PHMSA of the expanded sample program and establish a minimum standard that sampling programs must be based on a minimum 95 percent confidence level.

Further, the committee recommended that PHMSA retain the flexibility for operators to conduct either destructive or non-destructive tests when material properties verification is needed and requested PHMSA drop accuracy specifications but retain the requirement that any test methods used be validated and be performed with calibrated equipment. The GPAC also recommended PHMSA reduce the number of quadrants at which non-destructive evaluation tests be made from four to two.

Regarding the number of test locations and the number of excavations that must be performed, the GPAC recommended PHMSA accommodate situations where a single material properties verification test is needed (*e.g.,* additional information is needed for an anomaly evaluation/repair) and drop the mandatory requirements for testing multiple joints for large excavations. The GPAC also recommended PHMSA clarify the applicability of the requirements for developing and implementing procedures for conducting material properties verification tests on populations of undocumented or inadequately documented pipeline segments and the minimum number of excavations and tests that must be performed for those pipeline segments.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the method for material properties verification. PHMSA disagrees with implementing the alternative approach proposed by AGA, but the underlying comments of AGA and others related to having an alternative approach are discussed in this rulemaking and are addressed below. PHMSA strongly believes that knowledge of pipeline physical properties and attributes are essential for a modern IM program (see § 192.917(b)—*Data gathering and integration*) as well as effective pipeline and public safety. The PG&E incident at San Bruno, CA, was caused, in part, by PG&E mistakenly classifying the pipe that failed as seamless pipe. That pipe was welded seam pipe, and the failure occurred at a partially welded seam.

The NPRM included a list of material properties that could be confirmed using the material properties verification process. One of them in particular, steel toughness, is conventionally obtained only through destructive testing. It was not PHMSA's intent that toughness would need to be confirmed every time an operator was performing material properties verification, thus in effect requiring destructive testing for every location. Therefore, PHMSA is modifying this final rule to address toughness properties in a separate paragraph and is allowing the use of techniques that are reliable without specifying destructive testing. This is intended to accommodate new, non-destructive techniques currently under development. The new paragraph with these requirements also makes it clear that toughness is required only where needed and not necessarily in every case. PHMSA is also modifying other sections of this final rule to provide reasonably conservative default toughness values so that operators may achieve the goals of IM and MAOP reconfirmation using assumed values without the need for destructive testing. These changes will be discussed further in subsequent sections of this document.

Similarly, PHMSA is modifying the verbiage related to the listing of material properties to which the material properties verification process would apply. The clarification will make it clear that the material properties verification process only applies to the pertinent properties needed to achieve the goals of the activity for which material properties verification is needed, such as MAOP reconfirmation or IM. This avoids the potential for requiring that all properties be documented each time an operator goes out to perform material properties verification when only a subset of properties is needed.

PHMSA is also replacing the prescriptive accuracy specifications and unity plot validation for non-destructive testing with more general verbiage that requires that methods are validated and that operators account for the accuracy of the method used. This change will help accommodate new technology and techniques currently under development and avoid situations that

might require destructive testing to validate the non-destructive methods.

In response to the comments, PHMSA is relaxing the number of test points for non-destructive tests from four quadrants to two quadrants. This allows the operator to perform material properties verification on the top half of the pipe and would avoid the need to access the bottom half of the pipe when the repair or maintenance activity would not otherwise require it. PHMSA is also removing the proposed requirement to conduct material verification at multiple locations within a single large excavation based on the number of joints of line pipe exposed. PHMSA believes the methods described in this final rule will provide operators accurate material properties information without requiring more excavation activities than necessary.

In this final rule, PHMSA is modifying § 192.607 to specifically list the types of excavations where operators that need to verify material properties should seek to conduct material properties verification. This revision intends to avoid requiring operators perform the material properties verification process at partial excavations that do not expose the pipeline segment. For example, PHMSA considers excavations associated with direct examinations of anomalies to be an opportunity to perform material properties verification. Similarly, PHMSA is modifying the language to acknowledge the need to perform one-time material properties verification activities at specific locations, such as when performing repairs. An operator who has complete material documentation for a particular pipeline segment would not need to undertake the sampling program at excavations on that particular segment. The sampling program is specifically required when the operator needs to document material properties for entire segments of pipelines.

PHMSA disagrees with the removal of the number of samples needed and is maintaining the minimum standard to define the number of excavations in the sampling program as 1 per mile or 150 if the population of pipeline segments is more than 150 miles, whichever is less. However, PHMSA is modifying the rule to provide operators the option of proposing an alternative sampling program if they send a notification and justification of the alternative program to PHMSA in accordance with the new notification procedures at § 192.18. Operators may use an alternative sampling program 91 days after submitting a notification per § 192.18 to PHMSA if the operator has not received a letter of objection or a request from PHMSA for more time to review.

PHMSA is also withdrawing the expanded sampling requirements to address cases where operators identify problems in the initial sampling program. Instead, operators may use an alternative sampling approach that addresses how the operator's sampling plan will address findings that reveal physical pipeline properties and attributes that are not consistent with all available information or existing expectations or assumed physical pipeline properties and attributes used for pipeline operations and maintenance in the past. Operators taking such an approach must notify PHMSA of the adverse findings and provide PHMSA with specific details of the alternative sampling plan with a justification for such a plan in a notification to PHMSA. The alternative sampling program must be designed to achieve a 95 percent confidence level. In accordance with the new notification procedures at § 192.18, operators may use an alternative sampling plan 91 days after submitting a notification to PHMSA if the operator has not received a letter of objection or a request from PHMSA for more time to review.

In response to committee discussion, PHMSA is modifying its notification process broadly throughout part 192 to allow operators to propose using methods and technologies by notifying PHMSA in accordance with the new procedures in § 192.18. If an operator does not receive a letter of objection or a request from PHMSA for more time to review within 90 days of the notification, then the operator may use the proposed method or technology. Some committee members were concerned that some provisions throughout the NPRM would require action from PHMSA in the form of a ''no objection'' letter. Members noted that such a process can leave companies unable to proceed until PHMSA provided affirmative approval of the request. Committee members suggested that it may be more efficient and less burdensome for PHMSA to issue letters to operators only when they specifically object to proposed plans or solutions, and otherwise allow the operator to proceed as planned in the absence of such a letter. Other members were concerned that PHMSA might authorize sub-optimal plans or technologies by missing a deadline. To this end, members recommended an approach where PHMSA could request additional time for review beyond the 90-day period. PHMSA noted at the meeting that this is a similar process that is used by PHMSA for state waivers and the change should improve regulatory efficiency.

PHMSA's letter or email of objection will specify the reasons PHMSA does not approve of the proposed method or technology, while a request from PHMSA for more time to review the notification will extend the review period beyond 90 days. Further, to establish a verifiable record, it will be PHMSA's policy to send a ''no objection'' letter or email, either before or after the 90-day review period, when PHMSA does not object to an operator's proposed method or technology. PHMSA is applying this approach to other places in this rulemaking that require notifications and has created a general notification provision in subpart A of part 192.

PHMSA is modifying the recordkeeping requirement for the material properties verification provisions to avoid potential conflicts with other provisions in this rulemaking, such as MAOP reconfirmation, to clarify that operators are required to keep any records created, for the life of the pipeline, when verifying specific properties using the methods in § 192.607. These records must also be traceable, verifiable, and complete. These recordkeeping requirements are not retroactive, as they mandate the creation and retention of records as operators execute the methodology in § 192.607 on a prospective basis.

PHMSA disagrees with commenters that asked for PHMSA to establish a deadline for operators to complete the sampling programs. The opportunistic approach PHMSA proposed and retained for this final rule requires material properties verification activities to occur at excavation sites where operators are directly examining anomalies; performing *in-situ* evaluations; or are performing repairs, remediation, or maintenance. PHMSA does not expect operators to perform material properties verification for unknown pipe properties on pipeline segments exposed during one-call excavations. PHMSA has determined this approach is reasonable and will minimize the cost impacts of this final rule. A deadline for the material properties verification requirements of this rulemaking is not practical because it is impossible to forecast the rate or timing at which opportunities would arise to perform material properties verification for a given population of pipe.

Lastly, operators should have most of the required pipe information from following § 192.917(b) since subpart O of part 192 was codified over 15 years

ago in 2003. Section 192.917(b) requires operators to identify and evaluate the potential threats to pipeline segments by gathering and integrating existing data and information on the entire pipeline that could be relevant to the pipeline segment. In performing this identification and evaluation, operators must follow the requirements in ASME/ANSI B31.8S, section 4, and at a minimum gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S. The material properties needed to establish and substantiate MAOP are included in these lists.

*B. MAOP Reconfirmation—§§ 192.624 & 192.632*

*i.—Applicability*

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to require operators reconfirm MAOP for the following three categories of pipeline:

(1) Grandfathered pipe, in direct response to section 23(d) of the 2011 Pipeline Safety Act and NTSB recommendation P–11–14;

(2) Pipe for which documentation is inadequate to support the MAOP, in direct response to section 23(c) of the 2011 Pipeline Safety Act; and

(3) Pipe that has experienced a reportable in-service incident since its most recent successful subpart J pressure test due to an original manufacturing-related defect; a construction-, installation-, or fabrication-related defect; or a cracking-related defect, including, but not limited to, seam cracking, girth weld cracking, selective seam weld corrosion, hard spots, or stress corrosion cracking.

It is important to note that a given pipeline segment for which the MAOP reconfirmation process would apply might fit into one, two, or all three of these proposed categories. For pipeline segments where records of the pipeline physical properties and attributes to substantiate the current MAOP are not documented in traceable, verifiable, and complete records, only those segments located within an HCA or a Class 3 or Class 4 location would be subject to the MAOP reconfirmation process under the NPRM.

This proposal directly correlates to section 23 of the 2011 Pipeline Safety Act and NTSB recommendation P–11–14 regarding the need for spike hydrostatic testing where in-service incidents have occurred. The NTSB recommended such testing for all pipe manufactured before 1970.

For pipeline segments where operators established the MAOP in accordance with the grandfather clause at § 192.619(c) (*i.e.,* pipeline segments where the MAOP is based upon the highest actual operating pressure records from a 5-year interval between July 1, 1965, to July 1, 1970, and where operators therefore do not have pressure test or material property records) or for segments with a history of in-service incidents caused by cracks or crack-like defects, PHMSA proposed to restrict the applicability of MAOP reconfirmation to HCAs, Class 3 or Class 4 locations, or MCAs, if the MCA segment can accommodate an ILI tool. The proposed inclusion of pipeline segments in these locations and with these traits slightly expand on the mandate contained in section 23 of the 2011 Pipeline Safety Act, which applied only to previously untested pipeline segments operating at a pressure greater than 30 percent SMYS located in an HCA.

In recommendation P–11–14, the NTSB recommended that all pipe manufactured before 1970 be subjected to a hydrostatic pressure test that would include a spike hydrostatic test, which PHMSA considered in its process for reconfirming MAOP. PHMSA's preliminary evaluation concluded that doing so may not be cost-effective, since a large amount of such pipe could be in remote locations where the likelihood of personal injury or property damage as a result of an incident would be low.

PHMSA's proposal expanded the applicability of MAOP reconfirmation beyond the minimum required by the congressional mandate to include pipe operating at less than 30 percent SMYS. In addition, the NPRM expanded the location criteria to include some non-HCA locations in the form of MCAs and Class 3 and Class 4 locations. As PHMSA proposed in the definitions section of the NPRM, MCAs are areas that, while not meeting the HCA criteria, include 5 or more persons or dwellings intended for human occupation or are otherwise locations where people congregate, including the right-of-ways of major roadways. See section H of this final rule for additional background on the MCA definition. The NPRM also specified that the MAOP reconfirmation process would apply only to MCA pipeline segments able to accommodate an ILI tool. This provision would not preclude an operator from choosing to conduct a pressure test, but it would avoid forcing operators to conduct a pressure test because the pipeline segment was not ''piggable.''

2. Summary of Public Comment

Many stakeholders provided input on the proposed provisions in § 192.624 that require MAOP reconfirmation for pipeline segments previously excluded from testing by the grandfather clause, pipeline segments without adequate documentation to substantiate the current MAOP, and pipeline segments that have experienced a reportable in-service incident.

Regarding the first criterion above, several commenters, including INGAA, AGA, and NAPSR, generally supported the provision requiring operators of pipeline segments where the MAOP was established via the grandfather clause to reconfirm the MAOP of those segments. Several of the pipeline industry trade associations and industry entities, however, did not support the proposed application of these criteria to all grandfathered pipeline segments within HCAs, Class 3 and Class 4 locations, and Class 1 and Class 2 piggable segments within MCAs. Gas Processors Association's Midstream Association (GPA) and AGA stated that while they support the congressional mandate to conduct testing to confirm the material strength of previously untested gas transmission pipelines in HCAs that operate at a pressure above 30 percent SMYS, they oppose the proposed provisions which extend to additional pipeline segments. INGAA and Washington Gas supported the applicability of MAOP reconfirmation in MCAs for pipelines operating at greater than or equal to 30 percent SMYS but disagreed with the proposed provisions that included MCA pipelines operating at less than 30 percent SMYS.

Some citizen groups, including PST, expressed concern that the proposed changes regarding the grandfather clause did not go far enough and suggested that PHMSA should fully implement the recommendations set forth by the NTSB. They stated that PHMSA should eliminate the grandfather clause given that the proposed provisions would not include the following groups of pipelines: (1) Pipelines in non-HCA areas within Class 1 and Class 2 locations; and (2) pipeline segments for which there is an inadequate record of a hydrostatic pressure test in areas newly designated as an MCA that are not capable of being assessed by an in-line tool. Conversely, Northeast Gas Association (NGA) stated that PHMSA should retain the grandfather clause as it prevents existing, historically safe, and maintained pipelines from being subjected to unwarranted requirements.

For pipeline segments where operators do not have adequate documentation to support the current MAOP and that PHMSA proposed would be subject to the new MAOP reconfirmation requirements, some commenters stated that they support the

requirement to the extent that it is consistent with the congressional mandate to reconfirm MAOP for pipeline segments with insufficient records within Class 3 and Class 4 locations and Class 1 and Class 2 HCAs. These commenters further stated that § 192.624(a)(2) within the proposed MAOP reconfirmation requirements should be revised to clarify that it applies only to those gas transmission pipeline segments in HCAs and Class 3 and Class 4 locations that were constructed and put into operation since the adoption of the Federal Pipeline Safety Regulations in 1970, stating that otherwise § 192.624(a)(2) would apply to those pipelines put into service prior to the implementation of Federal regulations where the requirement to maintain a pressure test record does not apply. Some commenters also stated that PHMSA should revise § 192.624(a) within the proposed MAOP reconfirmation requirements to make clear that operators that have used one of the proposed allowable methods for establishing MAOP in § 192.624(b) other than the pressure test method are not required to have a pressure test record to comply with the record requirements of the section. Washington Gas asserted that the MAOP reconfirmation requirements should apply to only pipeline segments in HCAs that operate at a pressure of greater than or equal to 30 percent SMYS. Other commenters, including Xcel Energy, stated that the proposed provisions should allow operator discretion regarding what constitutes a reliable, traceable, verifiable, and complete record to determine the necessary documentation to support a pressure test record and the necessary material properties for MAOP verification. Additionally, AGA recommended the deletion of the phrase ''reliable, traceable, verifiable, and complete'' from the proposed MAOP reconfirmation provisions in § 192.624(a)(2). Similarly, other commenters, including INGAA, recommended omitting ''reliable'' from the phrase and provided a suggested definition for ''traceable, verifiable, and complete.''

Lastly, with regard to the third category of applicable pipeline segments to the proposed MAOP reconfirmation requirements, many commenters either disagreed or requested clarification for the requirement that MAOP must be reconfirmed in cases where an in-service incident occurred due to a manufacturing defect listed under § 192.624(a)(1). For example, INGAA stated that an operator can evaluate such manufacturing defects more effectively through ongoing operations and maintenance activities rather than through MAOP reconfirmation, and that the defects PHMSA is concerned with are already addressed through integrity management. Similarly, Boardwalk Pipeline stated that pipelines that have experienced an in-service incident because of the listed defects in § 192.624(a)(1) should be subject to integrity management measures rather than MAOP reconfirmation. TransCanada and TPA recommended adding text to the applicability section of the MAOP reconfirmation requirements that would exclude a pipeline segment from such requirements if the operator has already acted to address the cause of the reported incident. Additionally, one commenter suggested that this requirement should apply only to pipelines in HCAs. Some commenters, including AGA and Consolidated Edison of New York (Con Ed), also requested additional time to comply with the proposed MAOP reconfirmation provisions, asserting that operators would be required to replace many of their transmission mains to comply with the new requirements because their current records would not be satisfactory. Due to the urban density and scale of the service areas of certain operators, AGA and Con Ed stated that this replacement process would take longer than the 15-year schedule provided in the rule. One commenter suggested that if the applicability criteria for pipeline segments with in-service incidents and manufacturing defects remains in the rule, it should be limited to a more contemporary time frame, such as a rolling 15-year window or those in-service incidents that have occurred since 2003. Pipeline Safety Trust, on the other hand, stated that the proposed timeframe of 15 years is too long for operators to reconfirm MAOP in HCAs and complete critical safety work, and they urged PHMSA to adopt significantly shorter timelines in the final rule.

Additionally, AGA asserted that the proposed MAOP provisions do not address how the completion plan and completion dates of the section would apply to pipelines that might experience a failure in the future and would then be subject to the proposed MAOP reconfirmation requirements, or for pipelines that are not currently located in a MCA but may be in the future. Lastly, INGAA stated that section 23 of the 2011 Pipeline Safety Act requires that PHMSA consult with the Chairman of the Federal Energy Regulatory Commission (FERC) and State regulators before establishing timeframes for the testing of previously untested pipes, and it is not evident that PHMSA has complied with this requirement.

As a general comment, several stakeholders, including AGA, Louisville Gas & Electric, New Mexico Gas Company, National Grid, NW Natural, PECO Energy, TECO Pipeline Gas, and New York State Electric and Gas (NYSEG), proposed an alternative method for MAOP reconfirmation where operators would execute two separate sets of actions that they stated could be performed simultaneously or separately. First, operators would either assess high-risk gas transmission pipelines using a pressure test or an alternative technology that is determined to be of equal effectiveness. Operators would categorize these pipelines in three tiers and schedule them for testing depending on the pipeline's SMYS and class location. Second, operators would use an ILI tool on all gas transmission pipelines, regardless of class location, that are capable of accommodating ILI tools. The ILI tool used would be qualified to find defects that would fail a subpart J pressure test. These commenters stated that this alternative methodology was necessary because the proposed provisions would create operational inefficiencies that would likely result in excessive cost and limited public benefit. In addition to providing this alternative proposal, many of these commenters provided other assorted comments on the proposed provisions.

At the GPAC meeting on March 26, 2018, the GPAC recommended that PHMSA revise the scope of the proposed MAOP reconfirmation provisions by excluding lines with previously reported incidents due to crack defects. To go along with this, the GPAC also recommended PHMSA create a new section in subpart O of part 192, the natural gas IM regulations, to address pipeline segments with crack-related incident histories. Doing these actions would eliminate the need for the proposed definitions of ''modern pipe,'' ''legacy pipe,'' and ''legacy construction techniques,'' and the impact of this is discussed later in this document.

The GPAC also recommended that the MAOP reconfirmation provisions be revised to apply to pipeline segments in HCAs or Class 3 or Class 4 locations that do not have traceable, verifiable, and complete records necessary to establish MAOP under § 192.619. Previously, the provisions were applicable to those pipeline segments without traceable, verifiable, and complete subpart J pressure test records. Similarly, the GPAC recommended that the MAOP

reconfirmation provisions only apply to grandfathered pipelines in HCAs, Class 3 or Class 4 locations, or MCAs able to accommodate inspection with ILI tools, and that have MAOPs producing a hoop stress greater than or equal to 30 percent SMYS. In the NPRM, the provisions applied to all grandfathered pipelines in those locations regardless of SMYS. In making this recommendation, the GPAC also suggested PHMSA review the costs and benefits of applying the MAOP reconfirmation provisions to non-HCA Class 3 and Class 4 grandfathered pipe with MAOPs less than 30 percent SMYS.

During the meeting on March 27, 2018, the GPAC also recommended revisions to other sections related to the applicability of MAOP reconfirmation provisions, including withdrawing the proposed revisions to § 192.503, which tied general requirements of the subpart J pressure test to alternative MAOP and MAOP reconfirmation provisions, and withdrawing the proposed revisions to § 192.605(b)(5), which cross-referenced several sections related to the MAOP reconfirmation requirements to the requirements regarding an operator's procedural manuals.

The GPAC also examined the provisions related to the completion date of these actions and recommended that PHMSA revise the appropriate paragraph to account for pipelines that may be subject to these requirements in the future, such as for pipelines that are not in an HCA or Class 3 or Class 4 location now, but due to population growth or development may be in such a location in the future. More specifically, the GPAC recommended that an operator would have to complete all actions required by the MAOP reconfirmation provisions on 100 percent of their pipelines that meet the applicability requirements by 15 years after the effective date of the rule or as soon as practicable but no later than 4 years after the pipeline segment first meets the applicability conditions, whichever is later. The GPAC also recommended PHMSA consider a waiver or no-objection procedure if operators cannot meet the requirements within 4 years under this scenario.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the applicability of MAOP reconfirmation. After considering these comments and as recommended by the GPAC input, PHMSA is modifying the rule to address many of these comments.

Regarding the applicability of the new MAOP reconfirmation requirements at § 192.624, PHMSA notes that a simplistic repeal of the ''grandfather clause'' at § 192.619(c) is not practical because it applies to gathering and distribution lines. As the proposed rule was primarily focused on the safety of gas transmission pipelines, a broad repeal of the grandfather clause was not contemplated in the proposed rule. Further, a major expansion of the MAOP reconfirmation requirements beyond the scope of the congressional mandate in the 2011 Pipeline Safety Act would be costly, and the GPAC noted at the meeting on March 26, 2018, that there may be cost-benefit concerns to test all grandfathered pipelines. The GPAC recommended PHMSA analyze requiring operators to reconfirm the MAOP of all grandfathered lines, and PHMSA considered this as an alternative in the RIA.[65]

In response to the comments received and the recommendations of the GPAC, PHMSA is modifying the applicability of the MAOP reconfirmation requirements as follows: (1) The applicability related to pipeline segments with past in-service incidents is being eliminated. As commenters mentioned, operational failures are already addressed within integrity management and other subparts of part 192. Section 192.617, for example, would require an operator of a gas transmission line that had an in-service incident caused by an incorrect MAOP to determine the proper MAOP of the segment before placing it back into service. Causes of in-service failures are also already incorporated into the risk analyses required by the current IM regulations. If the cause of an incident is an incorrect MAOP, for example, then operators would be required to reconfirm it following the incident within their IM program. However, PHMSA is adding a new paragraph to strengthen the IM requirements at § 192.917(e)(6) to specifically include actions operators must take to address pipeline segments susceptible to cracks and crack-like defects. (2) PHMSA is also modifying the applicability of these requirements by specifying the MAOP reconfirmation requirements are applicable to pipeline segments that do not have the pipeline physical properties and attributes needed to establish MAOP documented in traceable, verifiable, and complete records, specifically those records required to establish and substantiate the MAOP in accordance with § 192.619(a), including those records required under § 192.517(a). More specifically, these requirements to verify MAOP would apply to such pipelines without traceable, verifiable, and complete records in HCAs and Class 3 and Class 4 locations as specified in the congressional mandate. Further, PHMSA is dropping the word ''reliable'' from the applicability section of the regulatory text to be consistent with previous PHMSA advisory bulletins on this topic.[66] (3) PHMSA is modifying the applicability of the MAOP reconfirmation provisions for ''grandfathered'' pipeline segments to pipelines with an MAOP greater than or equal to 30 percent of SMYS, as specified in the congressional mandate. In addition to these requirements applying to grandfathered pipelines in HCAs, PHMSA is retaining the MAOP reconfirmation applicability requirement for grandfathered pipeline segments in Class 3 and Class 4 locations and in piggable MCAs to address the NTSB recommendation on this topic. As per the committee's suggestion, PHMSA analyzed whether it would be feasible to make the MAOP reconfirmation requirements applicable to non-HCA Class 3 and Class 4 pipe operating below 30 percent SMYS. This analysis is presented as an alternative in the RIA for this rulemaking. Ultimately, PHMSA did not choose to include these categories of pipelines in the scope for the applicability of the MAOP reconfirmation requirements because the GPAC recommended it was cost-effective for the provision to only apply to pipe operating above 30 percent SMYS in Class 3 and 4 locations and because those pipelines present the greatest risk to safety.

With respect to the completion date, PHMSA acknowledges the comments received stating that pipeline segments could meet applicability criteria at some point in the future such that it would be difficult or impossible to meet the 15-year deadline for completion. Therefore, PHMSA agrees with the GPAC recommendation discussed above and is modifying the requirements in this final rule to include an alternative completion deadline of 4 years for pipeline segments that meet the applicability standards at some point in the future, for example for those pipeline segments that were in non-HCA locations that later become HCA locations. However, PHMSA emphasizes that this 4-year timeframe does not supersede, invalidate, or otherwise modify the existing requirements in § 192.611 for operators to confirm or revise the MAOP of

[65] See section 5.9.1 of the RIA for further details.

[66] Pipeline Safety: Verification of Records; 77 FR 26822; May 7, 2012; *https://www.govinfo.gov/content/FR-2012-05-07/pdf/2012-10866.pdf.*

segments within 24 months of a change in class location.

PHMSA also acknowledges that some commenters thought the 15-year compliance timeframe for MAOP reconfirmation was too long. PHMSA believes a 15-year timeframe is necessary to be consistent with § 192.939, which allows operators to use a confirmatory direct assessment to confirm their MAOP in two, 7-year inspection cycles. This timeframe was discussed by the GPAC and was approved by unanimous vote. PHMSA will note that operators are required to have 50 percent of the applicable mileage completed within 8 years of the effective date of the rule. PHMSA would expect operators to prioritize and reconfirm the MAOP of the highest-risk segments first.

PHMSA is also withdrawing miscellaneous revisions to § 192.503, which tied general requirements of the subpart J pressure test to alternative MAOP and MAOP reconfirmation provisions, and miscellaneous revisions from § 192.605(b)(5), which cross-referenced several sections related to MAOP requirements to the requirements regarding an operator's procedural manuals. These changes were made to simplify the regulations.

Additionally, because PHMSA has eliminated pipeline segments with past in-service incident history from the scope of the MAOP reconfirmation requirements, PHMSA is striking the proposed references within the MAOP reconfirmation requirements to the alternative MAOP requirements at § 192.620(a)(ii). Operators who used the alternative requirements to establish the MAOP of their pipelines were required to have complete documentation [67] and therefore would not be subject to the MAOP reconfirmation requirements. If an operator had previously established the MAOP of a pipeline segment under the alternative MAOP requirements, but has since lost the records necessary to validate the alternative, they would have to reconfirm MAOP using the alternative MAOP requirements, or apply for a special permit to continue operation.

Per the requirement in section 23 of the 2011 Pipeline Safety Act, PHMSA consulted with members of FERC and State regulators, including representatives from NAPSR and the National Association of Regulatory Utility Commissioners, as appropriate, to establish the timeframes for completing MAOP reconfirmation. As a part of this consultation, which occurred as a function of the GPAC meetings from 2017 through 2018, PHMSA accounted for potential consequences to public safety and the environment while also accounting for minimal costs and service disruptions. These representatives provided both input and positive votes that the provisions surrounding MAOP reconfirmation were technically feasible, reasonable, cost-effective, and practicable if certain changes were made. As previously discussed, PHMSA has taken the GPAC's input into consideration when drafting this final rule and made the according changes to the provisions.

*B. MAOP Reconfirmation—§§ 192.624 & 192.632*

*ii.—Methods*

In developing regulations to reconfirm MAOP where necessary, Congress mandated that PHMSA consider safety testing methodologies that include pressure testing and other alternative methods, including in-line inspections, determined to be of equal or greater effectiveness. The NTSB recommended an expansive pressure test approach to address the safety issues identified in their investigation of the PG&E incident through recommendations P–11–14 and P–11–15. In response to the congressional mandate, PHMSA evaluated other methodologies and identified five additional methods that could provide an equivalent or greater level of safety. Therefore, PHMSA proposed to allow the following six methods for MAOP reconfirmation, including the conventional pressure test method.

Summary of PHMSA's Proposal: Method 1—Pressure Test

A pressure test is the most conventional assessment method by which an operator may reconfirm a pipeline segment's MAOP. PHMSA proposed standards for conducting pressure tests for MAOP reconfirmation in part to meet the intent of NTSB recommendations P–11–14 and P–11–15. First, PHMSA proposed minimum test pressure standards where a pipeline segment's MAOP would be equal to the test pressure divided by the greater of either 1.25 or the applicable class location factor. Second, if the pipeline segment might be susceptible to cracks or crack-like defects,[68] then the operator must incorporate a spike pressure feature into the pressure test procedure. PHMSA proposed standards for the spike hydrostatic test in § 192.506. If the operator has reason to believe any pipeline segment may be susceptible to cracks or crack-like defects, the operator would be required to also estimate the remaining life of the pipeline in accordance with the same standards specified in Method 3, the engineering critical assessment method.

Summary of Public Comment: Method 1—Pressure Test

Several commenters opposed the proposed provisions requiring a spike test to be conducted as part of the pressure test for the purposes of MAOP reconfirmation, and these comments are discussed further under the ''spike test'' portion of the proposal and comment summary of this rulemaking.

API suggested that a pipeline segment's MAOP can be best established through performing a combination of pressure tests and ILI examinations, and they discussed how operators could conduct hydrostatic pressure testing to determine the in-place yield strength of a segment of pipeline by conducting a ''spike'' test pressure held for a few minutes followed by a subpart J pressure test approximately 10 percent below the spike level. API further stated that using ILI tools in conjunction with this method would further substantiate the results, as geometry ILI tools capable of measuring inside diameter to detect yielding could further substantiate and quantify the results of the pressure test.

AGA stated that while they believe that pressure testing is a straightforward and well-established method, the proposed Method 1 MAOP reconfirmation requirements are unnecessarily complex. AGA further stated that subpart J provides different requirements and specifications for pressure tests based on the type of pipe being tested, and that Method 1 should refer to subpart J rather than to § 192.505(c) specifically, which requires unnecessarily stringent requirements. PG&E supported the proposed provisions and committed to pressure testing all pipes.

INGAA stated that since the basic strength properties of steel pipe do not change over time, PHMSA should not limit allowable tests to only those conducted after July 1, 1965, as was proposed in § 192.619(a)(2)(ii). They emphasized that the test parameters, not

[67] ''Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines; Final Rule;'' October 17, 2008; 73 FR 62148. The effective date of the rule was November 17, 2008.

[68] These pipelines can include pipelines constructed with ''legacy pipe'' or using ''legacy construction techniques;'' pipelines with evidence or risk of stress corrosion cracking or girth weld cracks; or pipelines that have experienced an incident due to an original manufacturing-related defects, construction-related defects, installation-related defects, or fabrication-related defects.

the test date, should be considered for MAOP reconfirmation. Further, INGAA stated that recognizing the validity of earlier tests would not necessarily mean that no further pressure tests would be conducted, as periodic testing may be required to ensure the continued integrity of the pipeline segment under the operator's integrity management program. However, such additional tests are managed under IM, which is separate from MAOP reconfirmation.

Certain commenters stated that a spike test is not required to establish an adequate margin of safety for MAOP reconfirmation and suggested PHMSA eliminate spike testing from the pressure test method of MAOP reconfirmation.

Regarding the proposed definitions of ''legacy pipe'' and ''legacy construction,'' AGA and Xcel Energy commented that as proposed, the definitions could be interpreted to apply to distribution pipelines as well as gas transmission pipelines. Commenters requested that PHMSA explicitly exclude distribution pipelines from these definitions, which would be applicable to all part 192.

On March 26, 2018, the GPAC recommended that PHMSA delete the spike test requirements from the pressure test method of MAOP reconfirmation. The GPAC also recommended that PHMSA require operators to perform a pressure test in accordance with subpart J of part 192 rather than refer to specific requirements in § 192.505. Further, and as discussed during the meetings of December 2017 and March 26, 2018, if the applicable pressure test segment does not have traceable, verifiable, and complete MAOP records, the operator must use the best available information upon which the MAOP is currently based to conduct the pressure test. The GPAC recommended PHMSA create a requirement for the operator of such a pipeline segment to add the test segment to its plan for opportunistically verifying material properties in accordance with the material properties verification provisions. During the meeting, PHMSA noted that most pressure tests would present at least two opportunities for material properties verification at the test manifolds.

PHMSA Response: Method 1—Pressure Test

PHMSA appreciates the information provided by the commenters regarding the pressure test method of MAOP reconfirmation (Method 1). After considering these comments and as recommended by the GPAC, PHMSA is eliminating the spike testing requirement as part of the pressure test method of MAOP reconfirmation. As commenters stated, spike testing is primarily used for the mitigation of cracks and crack-like defects, and PHMSA has determined it would therefore be more appropriate to be placed within the context of threat management under IM. Additionally, PHMSA is removing the definitions for and related references to ''legacy pipe'' and ''legacy construction'' in this final rule because the applicability to pipe with ''legacy pipe or construction'' leaks or failures was dropped from the applicability criteria for MAOP reconfirmation. PHMSA also modified the rule to refer to subpart J pressure tests rather than paragraph § 192.505(c), specifically, and to recognize the validity of earlier pressure tests. Lastly, if an operator does not have traceable, verifiable, and complete records for the material properties needed to establish MAOP by pressure testing, PHMSA is requiring that operators test, in accordance with the material verification requirements, the pipe materials cut out from the test manifold sites at the time the pressure test is conducted. Further, if there is a failure during the pressure test, the operator must test any removed pipe from the pressure test failure in accordance with the material properties verification requirements to ensure that the segment of pipe is consistent with operator's sampling program established under § 192.607. This will avoid issues where operators may not have the documented and verified physical pipeline material properties and attributes that would otherwise be necessary to perform a hydrostatic pressure test to reconfirm MAOP.

Summary of Proposal: Method 2—Pressure Reduction

In the NPRM, PHMSA proposed that pipeline operators could choose to reduce the MAOP of the applicable pipeline segment to reconfirm the segment's MAOP. This approach would use the recent operating pressure as a *de facto* pressure test, and then an operator would set the pipeline segment's MAOP at a slightly lower pressure. PHMSA proposed that operators using this method set the pipeline's MAOP to no greater than the highest actual operating pressure sustained by the pipeline during the 18 months preceding the effective date of the final rule divided by the greater of either 1.25 or the applicable class location, which are the same safety factors as used for the pressure testing in Method 1. PHMSA included standards for establishing the highest actual sustained pressure for the purposes of reconfirming MAOP under this method and included standards for addressing class location changes. Additionally, PHMSA proposed that, if the operator has reason to believe any pipeline segment contains or may be susceptible to cracks or crack-like defects, the operator would be required to estimate the remaining life of the pipeline.

Summary of Public Comment: Method 2—Pressure Reduction

AGA commented that the 18-month look-back time frame listed in the pressure reduction MAOP reconfirmation method is a much too narrow time frame for consideration and that the section should be rewritten to clarify that the pressure reduction should be taken from either (1) the immediate past 18 months, or (2) 5 years from the time the last pressure reduction was taken, stating that tying the baseline pressure to the effective date of the rule is arbitrary. Enterprise Products recommended that PHMSA clarify the derating criteria used for pipes that use this method of reconfirming MAOP. Further, Piedmont expressed concern that this method does not account for the actual gap that can occur between MAOP and operating pressure. Some commenters questioned whether the MAOP from which to take a pressure reduction was based on the most recent pressure test or the historical highest-pressure test, and some commenters suggested PHMSA revise this provision to allow operators to reconfirm the MAOP based on the existing MAOP and not using an 18-month look-back period unless an incident caused by a material-related or construction-related defect has occurred on the pipeline since its last subpart J pressure test.

TPA stated that using this method unfairly penalizes operators in situations where the operator has prepared for future needs and has not operated at MAOP for a period greater than 18 months. Similarly, another commenter suggested that operators who have already reduced MAOP on pipeline segments to be proactive should not be penalized by having to take an additional reduction in MAOP.

Some commenters recommended limiting the applicability of this method to those pipelines operating at 30 percent SMYS or greater.

Regarding the pressure reduction method for MAOP reconfirmation, the GPAC recommended PHMSA increase the look-back period from 18 months to 5 years and remove the requirements for operators selecting to take the pressure reduction to reconfirm MAOP to

perform fracture mechanics analysis on those pipeline segments.

PHMSA Response: Method 2—Pressure Reduction

PHMSA appreciates the information provided by the commenters regarding the pressure reduction method of MAOP reconfirmation (Method 2). After considering these comments and as recommended by the GPAC, PHMSA is increasing the look-back period to 5 years from the publication date of the rule and is removing the requirements for operators to perform fracture mechanics analysis on those pipeline segments where the operator has selected Method 2. PHMSA made this change because the 5-year look-back period is consistent with IM requirements regarding MAOP confirmation.

Summary of PHMSA's Proposal: Method 3—Engineering Critical Assessment

Method 3 directly addresses the congressional mandate for PHMSA to consider safety testing methodologies that include other alternative methods, including ILI, determined to be of equal or greater effectiveness. Demonstrating that knowledge gained from an ILI assessment provides an equivalent level of safety as a pressure test is technically challenging. PHMSA used best safety practices gained from implementation of integrity management since 2003; development of class location special permits; and technical research on related topics, such as analysis of crack defects and seam defects. PHMSA applied these principles and analytical methods to develop an engineering critical assessment (ECA) methodology, which applies state-of-the-art fracture mechanics analysis to analyze defects in the pipe and determine if those defects would or would not survive a hydrostatic pressure test at the test pressure needed to establish MAOP. In addition, PHMSA proposed that if the operator has reason to believe any pipeline segment contains or may be susceptible to cracks or crack-like defects, the operator would be required to estimate the remaining life of the pipeline using the fracture mechanics standards PHMSA specified.

Summary of Public Comment: Method 3—Engineering Critical Assessment

Several trade associations and pipeline industry entities stated that ILI is the best and most practical method for MAOP reconfirmation due to its cost-effectiveness and environmentally friendly nature, and that PHMSA should allow operators to use ILI as a reconfirmation method. These commenters, however, also stated that the requirements proposed for the usage of ILI with an ECA are overly complicated and burdensome, and they specifically recommended that the final rule should be simplified so that this method will play a greater role in MAOP reconfirmation in lieu of a pressure test. For example, INGAA asserted that PHMSA should remove the requirements in the ECA related to operations, maintenance, and integrity management, arguing that these requirements do not factor into MAOP reconfirmation and would be covered elsewhere in part 192. Further, INGAA proposed additional alternatives for using the ECA method to obtain necessary data for MAOP reconfirmation, asserting that these alternatives would be less burdensome and equally effective. More specifically, INGAA suggested removing duplicate regulatory language, removing the pre-approval process for ILI, and adding unity plots as a method for operators to demonstrate that ILI is reliable for identifying and sizing actionable anomalies. TransCanada and PECO Energy Co. stated that for the ECA method to be used by industry, the detailed requirements listed under this method in the proposed rule should be replaced with the use of standard ECA best practices.

Some commenters suggested that operators have long relied on sound engineering judgments and conservative assumptions to account for record gaps. Commenters stated that, if stripped of the ability to use sound engineering judgment and conservative assumptions, operators would need to substantially invest in processes, procedures, tests, and project engineering and support to develop and implement a comprehensive material properties verification plan as outlined in the proposed regulations. Another commenter asked for clarification on using assumptions of Grade A pipe (30,000 psi) versus the use of 24,000 psi as noted in § 192.107(b)(2) if the SMYS or actual material yield strength and ultimate tensile strength is unknown or is not documented in traceable, verifiable, and complete records.

Another commenter suggested that in cases where a pipeline has been pressure tested, but not to the level of 1.25 times MAOP, PHMSA should allow operators to augment the original test with an ECA and other analysis to reconfirm the pipeline segment's MAOP under method 3.

The PST stated that there are certain cases in which the ECA method should not be allowed as an alternative to pressure testing. Citing a white paper prepared by Accufacts, Inc. on ECA methodology, the PST recommended that PHMSA prohibit the use of the ECA method for determining the strength of a pipeline segment in cases where there are girth weld crack threats, significant stress corrosion cracking threats, or dents with stress concentrator threats.

During the GPAC meeting on March 27, 2018, the GPAC recommended that PHMSA remove the fracture mechanics analysis for failure stress and crack growth analysis requirements from the ECA method of MAOP reconfirmation and move them to a stand-alone section in the regulations. Further, the GPAC recommended that such a section should not specify when, or for which pipeline segments, fracture mechanics analysis would be required. The GPAC suggested that this new fracture mechanics section outline a procedure by which operators perform fracture mechanics analysis when required or allowed by other sections of part 192, which was similar to its treatment of the proposed material properties verification procedures at § 192.607. Under the GPAC's proposal, the ECA method for MAOP reconfirmation would not contain any specific technical fracture mechanics requirements or Charpy V-notch toughness values but would instead refer to the new fracture mechanics section. Other recommendations related specifically to the new fracture mechanics section are discussed in that area of the proposal and comment summary section of this document.

The GPAC also recommended PHMSA add a requirement to verify material properties in accordance with the rule's material properties verification provisions if the information needed to conduct a successful ECA is not documented in traceable, verifiable, and complete records.

PHMSA Response: Method 3—Engineering Critical Assessment

PHMSA appreciates the information provided by the commenters regarding the ECA method of MAOP reconfirmation (Method 3). As recommended by the GPAC, PHMSA is removing the fracture mechanics analysis requirements from the ECA method of MAOP reconfirmation and moving them to a new stand-alone § 192.712. PHMSA agrees this change will improve comprehension of the regulations. This new section does not specify when, or for which pipeline segments, fracture mechanics analysis would be required but instead outlines a procedure by which operators perform

fracture mechanics analysis when required by other sections of part 192. Section 192.712 is referenced in the pressure reduction, ECA, and ''other technology'' methods of MAOP reconfirmation under § 192.624, as well as in § 192.917 for cyclic fatigue loading. Therefore, the ECA method for MAOP reconfirmation does not contain any specific technical fracture mechanics requirements or Charpy V-notch toughness values (full-size specimen, based on the lowest operational temperature) but instead refers to the new § 192.712. Comments related to the assumptions an operator can use when material properties are unknown are addressed in the discussion on § 192.712 below. PHMSA also added a requirement to verify material properties in accordance with the rule's material properties verification provisions at § 192.607 if the information needed to conduct a successful ECA is not documented in traceable, verifiable, and complete records.

PHMSA disagrees that the additional analytical requirements, beyond ILI, are overly complicated or burdensome. To conclude that an ECA is of equal or greater effectiveness as a pressure test for the purposes of MAOP reconfirmation, as mandated by Congress, more than an ILI and repair program is required. A pressure test proves that any flaws in the pipe are small enough to hold the test pressure without leaking. Such subcritical flaws must be analyzed to prove that they would pass a pressure test, even if the pressure test is not conducted. A fracture mechanics analysis is capable of reliably drawing such conclusions but must be carefully and capably performed. Such an analysis also requires accurate data. In the absence of reliable data for key parameters, such as fracture toughness, PHMSA allows the use of appropriately conservative assumptions. This is discussed in more detail in the sections below.

Based on an ASME report and research sponsored by PHMSA,[69] the ECA analysis can be reliably used to ascertain if a pipeline segment would pass a pressure test, even if it has seam weld cracking, and the final rule includes requirements for conducting ILI using tools capable of detecting girth weld cracks. The ECA must analyze any cracks or crack-like defects remaining in the pipe, or that could remain in the pipe, to determine the predicted failure pressure (PFP) of each defect.

PHMSA also notes that the final rule addresses cases where a pipeline has been pressure tested, but not to the level of 1.25 times MAOP, by allowing operators to account for those test results and augment the original test with an ECA, or conduct an ILI tool assessment program to characterize defects remaining in the pipe along with using an ECA to establish MAOP, to reconfirm the pipeline segment's MAOP using Method 3. Detailed ILI requirements are addressed in new § 192.493, which is discussed in more detail below.

PHMSA is moving the ECA process requirements in this final rule to a new stand-alone § 192.632. Section 192.624(c)(3) (ECA method of MAOP reconfirmation) and the new § 192.632 will cross-reference each other. PHMSA decided to make this change when finalizing this rulemaking only to improve the readability of the regulations. No substantive changes were made to the requirements in connection with this organizational change.

Summary of PHMSA's Proposal: Method 4—Pipe Replacement

When reconfirming MAOP on certain pipeline segments, some operators may face significant technical challenges or costs when performing either a pressure test or an ILI examination, and it may be more economically viable to replace the pipeline. Therefore, PHMSA proposed to allow pipe replacement for operators to reconfirm their MAOP. In such cases, the replacement pipeline would be designed, constructed, and pressure tested according to current standards to establish MAOP.

Summary of Public Comment: Method 4—Pipe Replacement

Commenters, including Mid-American Energy Company and Paiute Pipeline, stated their support for this method. The GPAC similarly supported this method and did not recommend any changes for this aspect of MAOP reconfirmation.

PHMSA Response: Method 4—Pipe Replacement

PHMSA appreciates the information provided by the commenters regarding the pipe replacement method of MAOP reconfirmation (Method 4). After considering these comments and as recommended by the GPAC, PHMSA is retaining the proposed rule text for Method 4 in the final rule.

Summary of PHMSA's Proposal: Method 5—Pressure Reduction for Small, Low-Pressure Pipelines

For low-pressure, smaller-diameter pipeline segments with small potential impact radii (PIR), PHMSA proposed an MAOP reconfirmation method similar to the pressure reduction under Method 2. Operators of pipeline segments for which (1) the MAOP is less than 30 percent SMYS, (2) the PIR is less than or equal to 150 feet, (3) the nominal diameter is equal to or less than 8 inches,[70] and (4) which cannot be assessed using ILI or a pressure test, may reconfirm the MAOP as the highest actual operating pressure sustained by the pipeline segment 18 months preceding the effective date of the final rule, divided by 1.1. In addition to this pressure reduction, operators of these lines would be required to perform external corrosion direct assessments in accordance with the IM provisions, develop and implement procedures to evaluate and mitigate any cracking defects, conduct a specified number of line patrols at certain intervals, conduct periodic leak surveys, and odorize the gas transported in the pipeline segment.

Summary of Public Comment: Method 5—Pressure Reduction for Small, Low-Pressure Pipelines

AGA stated that PHMSA did not provide enough justification for imposing the additional pressure reduction requirements listed under this method, asserting that this method should require either a 10 percent pressure reduction or the implementation of additional preventative actions that are feasible and practical, but not both. TPA stated that the 18-month criterion penalizes operators who may have operated pipelines at lower capacities to anticipate future needs. Furthermore, TPA urged PHMSA to limit the requirements for MAOP reconfirmation under Method 5 to the reduction in MAOP and not impose additional safety requirements, stating that these pipelines are generally considered low-stress pipelines and that their risk of rupture is very low. Similarly, API stated that the proposed requirements for odorization and frequent instrumented leak surveys are impractical. Some commenters felt that the terms for small potential impact radius and the applicable diameters should be defined.

[69] See: American Society of Mechanical Engineers (ASME) Standards Technology Report ''Integrity Management of Stress Corrosion Cracking in Gas Pipeline High Consequence Areas'' (STP–PT–011), and ''Final Summary Report and Recommendations for the Comprehensive Study to Understand Longitudinal ERW Seam Failures—Phase 1'' (Task 4.5); *https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=390.*

[70] 8.625 inches actual diameter.

On March 27, 2018, the GPAC recommended PHMSA delete the size and pressure criteria of this method and base the applicability solely on a potential impact radius of less than or equal to 150 feet. The GPAC also recommended increasing the look-back period to 5 years from 18 months. Further, the GPAC recommended PHMSA strike the additional requirements in this method related to external corrosion direct assessment, crack analysis, gas odorization, and fracture mechanics analysis. They also recommended PHMSA change the frequency of patrols and surveys to 4 times a year for Class 1 and Class 2 locations, and 6 times per year for Class 3 and Class 4 locations.

PHMSA Response: Method 5—Pressure Reduction for Small, Low-Pressure Pipelines

PHMSA appreciates the information provided by the commenters regarding the pressure reduction method of MAOP reconfirmation for small, low-pressure pipelines (Method 5). After considering these comments and as recommended by the GPAC, PHMSA is deleting the pipeline segment size and pressure criteria of this method and basing the applicability solely on a potential impact radius of less than or equal to 150 feet. PHMSA believes this change streamlines the regulations while maintaining pipeline safety. PHMSA is increasing the look-back period to 5 years, which is consistent with other sections of part 192, including integrity management. Additionally, PHMSA is deleting the requirements in this method related to external corrosion direct assessment, crack analysis, gas odorization, and fracture mechanics analysis. PHMSA is also changing the frequency of patrols and surveys to 4 times a year for Class 1 and Class 2 locations, and 6 times per year for Class 3 and Class 4 locations. PHMSA believes these changes increase regulatory flexibility while maintaining pipeline safety.

Summary of Proposal: Method 6—Alternative Technology

PHMSA proposed that operators may use an alternative technical evaluation process that provides a documented engineering analysis for the purposes of MAOP reconfirmation. If an operator elects to use an alternative method for MAOP reconfirmation, it would have to notify PHMSA and provide a detailed fracture mechanics analysis—including the safety factors—to justify the establishment of the MAOP using the proposed alternative method. The notification would have to demonstrate that the proposed alternative method would provide an equivalent or greater level of safety than a pressure test. PHMSA included this option to allow and encourage the continual research and development needed to improve state-of-the-art fracture mechanics analysis, integrity assessment methods, advances in metallurgical engineering, and new techniques.

Summary of Public Comment: Method 6—Alternative Technology

For the alternative technologies method of MAOP reconfirmation, several stakeholders opposed the timeframes, case-by-case approval process, and procedural barriers PHMSA proposed for using this method. Several commenters, including Cheniere Energy, Delmarva Power & Light, and INGAA, suggested that the procedural hurdles required by the proposed provisions would make this option difficult for operators to use for MAOP reconfirmation as well as for any other provisions PHMSA allows alternative technology use with notification. More specifically, these commenters suggested that a process whereby PHMSA could object to the use of an alternative technology at any time during a project's lifecycle does not provide the level of certainty necessary for operators to move forward with using alternative technologies. That uncertainty would deter the development of what could be better or safer alternatives.

Piedmont stated that it does not believe that the role of PHMSA includes determining the appropriate technologies to be used to reconfirm MAOP. Piedmont further stated that currently under subpart O, operators are required to obtain approval from PHMSA to use alternative technologies for integrity assessment, and that operators have waited more than 180 days for PHMSA to respond to these requests. Piedmont stated that this uncertainty cannot be reconciled with the planning and business considerations that an operator must consider when evaluating how to invest in technology and which methods to use for establishing MAOP. The PST stated that the approval process should be similar to the process used for special permits and that before these methods are approved by PHMSA, they should be subject to public review and comment under the National Environmental Policy Act of 1969 (NEPA).

At the meeting on March 27, 2018, the GPAC recommended PHMSA incorporate the 90-day notification and objection procedure for the use of alternative technology. To summarize, operators would have to notify PHMSA of its intent to use other technology, and PHMSA would have 90 days to respond with an objection if PHMSA had one, or a need for more review time. Otherwise, the operator would be free to use the proposed method or technology.

PHMSA Response: Method 6—Alternative Technology

PHMSA appreciates the information provided by the commenters regarding the other technology method of MAOP reconfirmation (Method 6). After considering these comments and as recommended by the GPAC, PHMSA is modifying the rule to incorporate the 90-day notification and objection procedure the committee recommended. Operators would have to notify PHMSA of its intent to use other technology to reconfirm MAOP in accordance with § 192.18, and PHMSA would have 90 days to respond with an objection if PHMSA had one or a notice that PHMSA required more time for its review, which would extend the timeframe. Without a notice of objection or additional review by PHMSA, the operator would be allowed to use the alternative technology. PHMSA has successfully applied the notification process to other technology assessments under subpart O since its inception and does not believe a special permit process is warranted for every notification for alternative technology. PHMSA believes the changes made in the final rule will address the concerns about timeliness of notification reviews by PHMSA.

*B. MAOP Reconfirmation—§ 192.624*

*iii.—Spike Test*

1. Summary of PHMSA's Proposal

The ''spike'' hydrostatic pressure test is a special feature of the pressure testing method of MAOP reconfirmation. PHMSA intends this aspect of the MAOP reconfirmation process to address the intent of NTSB recommendations P–11–14 (related to spike testing for grandfathered pipe) and P–11–15 (related to pressure testing to show that manufacturing and construction-related defects are stable).

PHMSA proposed that a spike test would be required for cases where a pipeline segment might be susceptible to cracks or crack-like defects. Such pipe may include ''legacy pipe;'' pipe constructed using ''legacy'' construction techniques; pipelines that have experienced an incident due to an original manufacturing-related defect, a construction-, installation-, or fabrication-related defect; or pipe with

stress corrosion cracking or girth weld cracks. Cracks and crack-like defects in some cases may be susceptible to a phenomenon called ''pressure reversal,'' which is the failure of a defect at a pressure less than a pressure level that the flaw has previously experienced and survived. The increased stress from the test pressure may cause latent cracks that are almost, but not quite, large enough to fail to grow during the test. If the crack does not fail before the test is completed, the resultant crack that remains in the pipe may be large enough to no longer be able to pass another pressure test. The spike portion of the pressure test is designed to cause such marginal crack defects to fail during the early, spike phase of the pressure test. The post-spike, long-duration test pressure validates the operational strength of the pipe. Using a short-duration, very high spike pressure followed by a long-duration integrity verification pressure provides greater assurance that the test is not ''growing cracks'' that could fail in-service after the test is completed. PHMSA proposed standards for the spike hydrostatic test in § 192.506. PHMSA used several technical reports and studies, including PHMSA-sponsored research, to inform the standards proposed for the spike test. Those materials include, American Society of Mechanical Engineers Standards Technology Report ''Integrity Management of Stress Corrosion Cracking in Gas Pipeline High Consequence Areas'' (STP–PT–011), and ''Final Summary Report and Recommendations for the Comprehensive Study to Understand Longitudinal ERW Seam Failures—Phase 1'' (Task 4.5).[71]

2. Summary of Public Comment

Some commenters supported the concept of requiring the use of a spike hydrostatic pressure test as part of the MAOP reconfirmation process for establishing MAOP but expressed concern over specific aspects of the provision. For example, AGA urged PHMSA to allow pneumatic pressure tests as well as hydrostatic pressure tests. In addition, AGA disagreed with the allotted test duration provided in the proposal. Similarly, other operators who commented, such as CenterPoint Energy and Dominion East Ohio, stated that the proposed spike test target hold pressure of 30 minutes exceeds the time needed to determine the mechanical integrity of the pipeline test segment and will cause pre-existing crack-like defects to grow. Alternatively, Dominion Transmission, Tallgrass Energy Partners, SoCalGas, and Paiute Pipelines stated that a test level of 100 percent SMYS, not 105 percent SMYS, would be sufficient to remediate cracking threats. Enterprise Products stated that the requirements for the design of a spike test should be based on integrity science, such as fatigue life and reassessment intervals, and suggested PHMSA's proposed spike test pressure limits were set at an arbitrary level. Enterprise further stated that the utility of stressing a pipe beyond 100 percent of its yield strength is questionable and potentially damages the pipe. Other commenters, including MidAmerican Energy Co., requested that pneumatic spike tests to 1.5 times MAOP be allowed when the resultant pressure complies with the limitations stated in the table in § 192.503(c).

Trade associations and pipeline industry entities, including INGAA, GPA, and TPA, asserted that PHMSA should eliminate the spike test requirement for establishing MAOP entirely. These commenters stated that the proposed provisions went beyond what was required to reconfirm MAOP for an accepted margin of safety. These commenters further asserted that spike testing is not an appropriate technique for MAOP reconfirmation, and it could result in unintended negative consequences without improving pipeline safety. They stated that spike testing is an aggressive and destructive technique that should be used only in cases in which time-dependent threats, such as a significant risk of stress corrosion cracking, exist.

INGAA and other commenters agreed with PHMSA that the use of spike hydrostatic testing is appropriate for time-dependent threats, such as stress corrosion cracking. INGAA, however, suggested changes to the proposed spike hydrostatic pressure test provisions and the cross-reference to those provisions in the proposed IM assessment method revisions to limit the spike testing requirement to time-dependent threats, to test to a minimum of 100 percent SMYS instead of 105 percent, and to provide an alternative for use of an instrumented leak survey. INGAA agreed that spike testing is the best means of testing a pipeline with a history of environmental cracking, such as stress corrosion cracking that has developed while a pipeline is in service, and noted that a spike test may be of value for in-service pipelines where metallurgical fatigue is of concern. INGAA further stated that pressure cycling should not need to be included in the proposed spike test provisions and that PHMSA should amend the proposed rule to limit spike testing only to those pipeline segments with stress corrosion cracking.

An additional commenter suggested PHMSA should allow operators to use the short-duration spike portion of a spike pressure test to determine the lower bound of the yield strength of the test section, including all pipe and components that are subjected to the test pressure. Such a test, if used for this purpose, must also confirm that yielding beyond that experienced in a standard tensile test to determine yield strength, typically on the order of 0.5 percent, has not occurred. This confirmation may be demonstrated by data from a pressure-volume plot of the test or a post-test geometry tool in-line inspection.

Public interest and other groups, including Pipeline Safety Coalition, Environmental Defense Fund (EDF), and NAPSR, expressed support for spike testing, stating that it would provide for increased pipeline safety. NAPSR further stated that the option of applying to use alternative technology or an alternative technological evaluation process would allow for some flexibility in cases in which a hydrostatic test is impractical. EDF also suggested additional measures to mitigate emissions from methane gas lost during testing.

At the GPAC meeting on March 2, 2018, the GPAC recommended that PHMSA revise the spike test requirements to change the minimum spike pressure to the lesser of 100 percent SMYS or 1.5 times MAOP, reduce the spike hold time to a minimum of 15 minutes after the spike pressure stabilizes, revise the applicable language to refer specifically to ''time-dependent'' cracking, incorporate the 90-day notification and objection procedure discussed for other sections, and adjust the SME requirements by adding language describing a ''qualified technical subject matter expert'' where applicable.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the requirements for spike pressure testing. After considering these comments and as recommended by the GPAC, PHMSA is modifying the rule to change the minimum spike pressure to the lesser of 100 percent SMYS or 1.5 times MAOP, as PHMSA believes these pressures are sufficient to maintain pipeline safety. PHMSA is specifying a spike hold time of a minimum of 15 minutes after the spike pressure stabilizes, rather than a 30-minute overall hold time, to be consistent with pipeline safety. Additionally, PHMSA is

[71] *https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=390.*

modifying the rule to revise the applicable language to refer specifically to ''time-dependent'' cracking, incorporate the same notification procedure under § 192.18 with the 90-day timeframe for objections or requests for more review time, and adjust the SME requirements by using broader language describing a ''qualified technical subject matter expert'' where applicable instead of specifying technical fields of expertise such as metallurgy or fracture mechanics. PHMSA believes these changes increase regulatory flexibility while maintaining pipeline safety.

In addition, as stated above, the spike test is being removed from the MAOP reconfirmation requirements. The spike test procedure in the new § 192.506 would be used whenever required by other requirements in part 192 to address crack remediation and the integrity threat of cracks and crack-like defects.

PHMSA disagrees with allowing pneumatic spike tests to 1.5 times MAOP based on safety concerns. Pneumatic pressure tests are allowed in § 192.503(c), with certain limitations, for new, relocated, or replaced pipe. For new, relocated, or replaced pipe, there is knowledge that the pipe is likely sound and is usually manufactured with recent mill pressure tests to confirm the pipe meets applicable standards. A spike test to perform an integrity assessment on *in-situ* pipe with known or suspected cracks or crack-like defects presents a much higher likelihood of the pipeline segment experiencing a leak or rupture during the test with resultant consequences, including the possibility of fire or explosion. PHMSA notes that conducting a pneumatic test using a compressible gas, such as air, nitrogen, or methane, would be a safety concern for the public and operating personnel. Gas that is highly compressed has stored energy that would be suddenly released should there be a flaw in the pipe. Liquids, such as water, do not have the stored energy release that a compressible gas has should the pipe have a flaw that either leaks or ruptures. Therefore, the safety risk of performing a hydrostatic pressure test (with water) is much lower due to the less-compressible nature of liquids. Compressed gas would be a fire or explosion hazard to the public. However, as specified in the proposed and final rules, operators that desire to use a pneumatic spike test may propose using such a test, with justification, by submitting a notification to PHMSA.

*B. MAOP Reconfirmation—§ 192.624*

*iv.—Fracture Mechanics*

1. Summary of PHMSA's Proposal

In the proposal, PHMSA determined that fracture mechanics analysis is a key aspect of meeting the congressional mandate to consider safety testing methodologies for MAOP reconfirmation of equal or greater effectiveness as a pressure test, including other alternative methods such as ILI. Demonstrating that knowledge gained from an ILI assessment provides an equivalent level of safety as a pressure test is technically challenging. An ILI assessment might reveal the presence of crack flaws and crack-like defects and characterize them within the accuracy of tool performance capabilities, but determining whether those cracks would survive a pressure test to reconfirm MAOP requires very in-depth and highly technical analysis. Such an analysis not only requires an accurate characterization of cracks, it also requires accurate and known metallurgical properties of the pipe. To address these aspects, PHMSA proposed more detailed requirements in § 192.921 for evaluating defects discovered during ILI to account for tool accuracy and other factors to accurately characterize flaw dimensions and support accurate fracture mechanics analysis. In addition, the material properties verification and documentation requirements PHMSA proposed are critical to performing fracture mechanics analysis of ILI-discovered defects that would be accurate enough to establish MAOP in a way that is demonstrably equivalent in safety to a pressure test. In the MAOP reconfirmation provisions, PHMSA proposed new requirements for fracture mechanics analysis for failure stress and cracks, listing specific requirements, standards, and data operators must use when performing a fracture mechanics analysis.

2. Summary of Public Comment

Most industry stakeholders were opposed to the proposed fracture mechanics requirements. AGA, New Mexico Gas Co., and TPA suggested that fracture mechanics have a limited place in preventing pipeline failures or predicting them accurately and should not be a component of MAOP reconfirmation. AGA stated that the rule should not prescriptively require fracture mechanics calculations to be performed for a broad range of applications but should be narrowed to include only transmission pipelines operating at a hoop stress greater than 30 percent SMYS, given that pipelines that operate below 30 percent SMYS have a strong tendency to leak rather than rupture.

Commenters also stated that requiring fracture mechanics as any part of the MAOP reconfirmation process was overly burdensome and unclear. Specifically, API stated that some of the requirements listed under the MAOP reconfirmation requirements were overly conservative and burdensome for most situations where this technique would be used. For instance, a commenter noted that there is no non-destructive evaluation (NDE) methodology for obtaining Charpy V-notch toughness values. Therefore, PHMSA's requirement to obtain Charpy V-notch toughness values eliminates the availability of non-destructive testing. Further, a commenter noted that the proposed ECA analysis prescribed a body toughness of 5-ft.-lbs. and a seam toughness of 1-ft.-lbs., which are arbitrary and very conservative. Vintage pipelines will not have Charpy V-notch toughness data, and requiring an overly conservative assumption of toughness is not reasonable. Toughness can vary depending on the manufacturer, the manufacturing method, and the pipe vintage, and it should not be prescribed in the regulations. The commenter further noted that using the conservative defaults, especially the overly conservative defaults PHMSA proposed, may result in an unacceptably short remaining life of the pipeline.

Similarly, commenters recommended PHMSA allow alternative methods of assessing strength properties that provide a suitable lower bound to the actual strengths. Allowing alternative methods will provide flexibility to consider conservative, but realistic, estimates of material properties. Commenters also stated that SMEs in both metallurgy and fracture mechanics are not needed to validate non-destructive test (NDT) methods. Engineers with knowledge in test validation methods but not necessarily metallurgy and fracture mechanics are capable of validating NDT methods.

More broadly, Energy Transfer Partners suggested that the proposed language for fracture mechanics is misplaced in MAOP reconfirmation and should be moved to the proposed requirements for non-HCA assessments, or elsewhere, since this text more closely resembles an ''assessment.'' Other commenters agreed with that concept, suggesting fracture mechanics is more appropriate under the IM measures for threat mitigation rather than for MAOP reconfirmation.

As previously discussed in this document, the GPAC recommended

PHMSA move the fracture mechanics analysis requirements out of the ECA method of MAOP reconfirmation and into a new stand-alone section in the regulations, making it a process for performing fracture mechanics analysis whenever required or allowed by part 192. The committee therefore recommended that PHMSA delete any cross-references to the MAOP reconfirmation and the spike pressure test provisions. The GPAC also recommended that operators make and retain specific records to document fracture mechanics analyses performed.

Along with moving the fracture mechanics analysis requirements to a stand-alone section, the GPAC had several specific recommendations related to how the requirements would function. The GPAC recommended PHMSA remove ILI tool performance specifications and replace them with a requirement for operators to verify tool performance using unity plots or equivalent technologies, and also recommended revisions to the fracture mechanics requirements by striking the sensitivity analysis requirements and replacing them with a requirement for operators to account for model inaccuracies and tolerances.

As it pertains to the Charpy V-notch toughness values (full-size specimen, based on the lowest operational temperatures) used in fracture mechanics analysis, the GPAC recommended that operators could use a conservative Charpy V-notch toughness value based on the sampling requirements of the material properties verification provisions or use Charpy V-notch toughness values from similar-vintage pipe until the actual properties are obtained through the operator's opportunistic testing program. The GPAC recommended that PHMSA clarify that default Charpy V-notch toughness values of 13-ft.-lbs. for pipe body and 4-ft.-lbs. for pipe seam only apply to pipe with suspected low-toughness properties or unknown toughness properties. Further, if a pipeline segment has a history of leaks or failures due to cracks, the GPAC recommended PHMSA require the operator to work diligently to obtain any unknown toughness data. In the interim, operators of such pipeline segments must use Charpy V-notch toughness values of 5-ft.-lbs. for pipe body and 1-ft.-lbs. for pipe seam. The GPAC also recommended PHMSA include a 90-day notification procedure similar to the previously agreed-upon procedure if operators wanted to request the use of differing Charpy V-notch toughness values.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the proposed fracture mechanics requirements. After considering these comments and as recommended by the GPAC, PHMSA is moving the fracture mechanics analysis requirements out of the ECA method of MAOP reconfirmation and into a new stand-alone § 192.712 in the regulations, making it a process by which operators must perform fracture mechanics analysis whenever required by part 192. This change was made to increase the readability of the regulations. As a part of making these provisions into a stand-alone section in the regulations, PHMSA is also deleting the references within § 192.712 to the MAOP reconfirmation and the spike pressure test provisions. PHMSA is adding a requirement for operators to make and retain specific records documenting any fracture mechanics analyses performed. PHMSA is also removing ILI tool performance specifications and sensitivity analysis requirements and replacing them with a requirement for operators to verify tool performance using unity plots or equivalent technologies and to account for model inaccuracies and tolerances. This change will increase regulatory flexibility while maintaining pipeline safety.

Regarding the default Charpy V-notch toughness values (full-size specimen, based on the lowest operational temperatures) used in fracture mechanics analysis when actual values are not known, industry and the GPAC had significant comments. PHMSA is aware of pipe manufactured per API Specification 5L in this decade (2010–2019) with Charpy V-notch toughness values for the weld seam as low as 1-ft. lbs. that has been used in gas transmission pipelines. Furthermore, API 5L does not contain required minimum Charpy V-notch toughness values for the weld seam.

A single default assumed toughness value might be inappropriate or overly conservative under some circumstances, or it might be a proper choice under other circumstances. To address this issue in this final rule, PHMSA is allowing the use of: (1) Charpy V-notch toughness values (full-size specimen, based on the lowest operational temperatures) from the same vintage and the same steel pipe manufacturers with known properties; (2) a conservative Charpy V-notch toughness value to determine the toughness based upon the ongoing material properties verification process specified in § 192.607; (3) maximum Charpy V-notch toughness values of 13.0 ft.-lbs. for body cracks and 4.0 ft.-lbs. for cold weld, lack of fusion, and selective seam weld corrosion defects if the pipeline segment does not have a history of reportable incidents caused by cracking or crack-like defects; (4) maximum Charpy V-notch toughness values of 5.0 ft.-lbs. for body cracks and 1.0 ft.-lbs. for cold weld, lack of fusion, and selective seam weld corrosion if the pipeline segment has a history of reportable incidents caused by cracking or crack-like defects; or (5) other appropriate Charpy V-notch toughness values that an operator demonstrates can provide conservative Charpy V-notch toughness values for the analysis of the crack-related conditions of the line pipe upon submittal of a notification to PHMSA. These modifications will provide flexibility to operators for considering conservative but realistic estimates of material properties.

PHMSA is also clarifying that operators do not need to use distinct metallurgy and fracture mechanics subject matter experts to review fracture mechanics analyses. In this final rule, PHMSA is replacing that requirement with a general requirement stating that fracture mechanics analyses must be reviewed and confirmed by a qualified subject matter expert. PHMSA expects a qualified subject matter expert to be an individual with formal or on-the-job technical training in the technical or operational area being analyzed, evaluated, or assessed. The operator must be able to document that the individual is appropriately knowledgeable and experienced in the subject being assessed.

*B. MAOP Reconfirmation—§ 192.624*

*v.—Legacy Construction Techniques/ Legacy Pipe*

1. Summary of PHMSA's Proposal

PHMSA proposed to add a definition to part 192 for ''legacy construction techniques,'' which defined historical practices used to construct or repair transmission pipeline segments that are no longer recognized as acceptable. In addition, PHMSA proposed a definition for ''legacy pipe'' that is defined by the presence of specific legacy manufacturing, welding, and joining techniques.

2. Summary of Public Comment

AGA expressed significant concerns with the proposed definitions of legacy pipe and legacy construction techniques for the purposes of part 192, commenting that PHMSA should eliminate the use of the terms entirely or otherwise revise these definitions to

exclude currently acceptable manufacturing and construction techniques. AGA stated if PHMSA were to codify the definitions of legacy pipe and legacy construction techniques, then PHMSA should limit its catch-all provisions within the language of the definitions to pipes with a longitudinal joint factor of less than 1.0. Doing so would ultimately include pipes with unknown joint factors, as § 192.113 requires a default longitudinal joint factor of 0.80 for any pipe with an unknown longitudinal joint factor. Similarly, AGL Resources, Alliant Energy, Atmos Energy, and TECO Peoples Gas supported AGA's suggested revisions to the definitions of legacy construction techniques and legacy pipe. API commented that PHMSA's proposed definition of legacy construction technique inappropriately includes the repair technique of puddle welds and recommended PHMSA clarify the definitions of wrought iron and pipe made from Bessemer steel. Dominion Transmission commented there may be instances where the longitudinal seam for modern day pipe is unknown, yet the pipe is not a high-risk seam type. They stated that such pipe does not present an integrity threat and should be excluded from the ''legacy pipe'' definition.

Gas Piping Technology Committee commented that the proposed definition of legacy construction techniques seems to contain some erroneous information. They asserted that the proposed definition went too far by implying that all the listed methods are no longer used to construct or repair pipelines, stating that while wrinkle bends may no longer be a common construction technique, they are still allowed under § 192.315 for steel pipe operating at a pressure producing a hoop stress of less than 30 percent of SMYS. Similarly, Oleksa and Associates commented that some operators are still installing Dresser couplings.

The Michigan Public Service Commission staff suggested that PHMSA add to the definition of ''legacy construction techniques'' a subsection that addresses other legacy construction techniques that are not in the current list and include within this subsection language referencing ''all other'' techniques. Northern Natural Gas proposed PHMSA eliminate the phrase ''including any of the following techniques'' from the definition of legacy construction techniques as it implies the list is not complete. They suggested that the definition of legacy pipe should differentiate between ductile and brittle pipe by toughness values in both the seam and the pipe body. Lastly, SoCalGas thought it would be more appropriate to reference these definitions under the IM regulations in subpart O instead of defining the terms in the context of the entire part.

These definitions were taken up by the GPAC in the context of the scope of MAOP reconfirmation, and they recommended in the meeting on March 26, 2018, that the definitions be withdrawn. Because the GPAC recommended to revise the scope of MAOP confirmation to not include pipelines with previous reportable incidents due to crack defects, these definitions would no longer be needed in the rule.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the proposed definitions for ''legacy pipe'' and ''legacy construction techniques.'' After considering these comments and as recommended by the GPAC, PHMSA is withdrawing these definitions from the final rule. Because the revised scope of MAOP confirmation requirements, discussed in the previous sections, no longer includes pipelines with previous reportable incidents due to crack defects, these definitions are no longer necessary.

*C. Seismicity and Other Integrity Management Clarifications—§ 192.917*

1. Summary of PHMSA's Proposal

Subpart O of 49 CFR part 192 prescribes requirements for managing pipeline integrity in HCAs. It requires operators of covered segments to identify potential threats to pipeline integrity and use that threat identification in their integrity programs. Included within this process are requirements to identify threats to which the pipeline is susceptible, collect data for analysis, and perform a risk assessment. Special requirements are included to address particular threats such as third-party damage and manufacturing and construction defects.

Following the PG&E incident, the NTSB recommended that PG&E evaluate every aspect of its IM program, paying particular attention to the areas identified in the incident investigation, and implement a revised IM program. PHMSA held a workshop on July 21, 2011, to address perceived shortcomings in the implementation of IM risk assessment processes and the information and data analysis (including records) upon which such risk assessments are based. PHMSA also sought input from stakeholders on these issues in the ANPRM.

Section 29 of the 2011 Pipeline Safety Act requires that operators consider the seismicity of the geographic area in identifying and evaluating all potential threats to each pipeline segment, pursuant to 49 CFR part 192. Pipeline threat analysis is addressed as one program element in the IM regulations in subpart O. Addressing seismicity is already implicitly required by § 192.917 as part of addressing outside force threat through the incorporation by reference of ASME B31.8S. Based on the direction of the mandate, PHMSA proposed to explicitly require that operators analyze seismicity and related geotechnical hazards, such as geology and soil stability, as part of the threat identification IM program element and mitigate those threats of outside force damage. PHMSA determined this would clarify expectations for this requirement and explicitly implement section 29 of the 2011 Pipeline Safety Act.

PHMSA also proposed revisions to § 192.917(e) to clarify that certain pipe designs must be pressure tested to assume that seam flaws are stable and that failures or changes to operating pressures that could affect seam stability are evaluated using fracture mechanics analysis.

2. Summary of Public Comment

There was broad support for explicitly requiring the consideration of the seismicity of a geographic area when identifying and evaluating all potential threats to a pipeline segment, and several stakeholders suggested minor revisions to the proposal. California Public Utilities Commission (CPUC) supported the proposed provisions and recommended adding text that would require consideration of any significant localized threat that could affect the integrity of the pipeline. CPUC further commented that operating conditions on the pipeline must also be a factor when operators identify local threats.

Some commenters, including PG&E and NGA, requested further clarification regarding what would constitute a seismic event for the purposes of identifying threats under the IM program for compliance purposes. AGA requested clarification on the requirements regarding whether operators are expected to conduct a one-time investigation on the risk of seismicity and geology, or if there is an expectation of a periodic requirement for re-investigation.

Multiple commenters disagreed with the proposed requirement in § 192.917(e) for operators to perform annual cyclic fatigue analyses if an operator identifies cyclic fatigue as a threat. INGAA and National Fuel

suggested that cyclic fatigue is an uncommon risk for natural gas pipelines and asserted that PHMSA did not provided significant technical justification for this analysis requirement. Some commenters suggested that the proposal to address cyclic fatigue and require pressure tests on seam threats is an overcompensation for the level of risk the threats present. Trade associations and pipeline industries proposed several alternative requirements for the conditions under which cyclic fatigue analyses should be required. API stated that they did not object to the measures listed, but the proposed provisions in § 192.935(b)(2) imply that an operator must take all the actions listed. API asserted that PHMSA should modify this proposed provision to state that operators must consider taking the actions listed but would not be specifically required to take all of them. Other commenters expressed concern that these proposed requirements conflict with the proposed requirements for pipeline segments needing to undertake MAOP reconfirmation because they experienced an incident due to manufacturing and construction (M&C) defects. Specifically, the requirements under § 192.917(e)(3) only allow operators to consider M&C defects stable if they have been subjected to a hydrostatic pressure test of 1.25 times MAOP, which would seemingly disallow or otherwise make fruitless the other methods of MAOP reconfirmation for these types of pipeline segments.

At the GPAC meeting on January 12, 2017, the GPAC recommended that no changes should be made to the proposed provisions on seismicity.

Regarding § 192.917(e)(2), which was discussed during the meeting on June 6–7, 2017, the GPAC noted that, under this provision, operators should be monitoring for condition changes that would cause the threat to potentially activate, and those condition changes should be what triggers a reassessment. The GPAC also noted problems with a suggested revision of performing a cyclic fatigue analysis within a 7-calendar-year period to match certain IM requirements because it would then impose a hard deadline on the continuous monitoring process and would prompt operators to act and again study cyclic fatigue even if the monitoring showed no evidence of cyclic fatigue being a threat. At the meeting, PHMSA suggested that operators could ensure the data involved in a cyclic fatigue analysis is periodically verified within a period not exceeding 7 years to align with IM requirements, but operators would only be required to perform a full evaluation if the data has changed. Following that discussion, the GPAC recommended revising the proposed requirements for cyclic fatigue at § 192.917 based on the discussion of GPAC members and considering PHMSA's proposed language that was presented at the meeting.

At the GPAC meeting on March 26–28, 2018, a public commenter suggested PHMSA remove the word ''hydrostatic'' from the requirements for considering M&C-related defects stable because any strength test that is approved in subpart J should qualify. Further, that public commenter suggested adding language where a pressure reduction or an ILI assessment with an ECA could be allowed for M&C defects as well. Another public commenter suggested removing references to cracks in these sections if PHMSA was intending to create a new section dedicated to addressing crack defects.

Ultimately, the GPAC recommended PHMSA revise the proposed requirements for M&C defects by deleting a cross-reference with the MAOP reconfirmation requirements, updating an applicability reference, and considering removing the term ''hydrostatic'' while allowing other authorized testing procedures. For the requirements related to electric resistance welded (ERW) pipe, the GPAC recommended PHMSA delete the phrase related to pipe body cracking and have those requirements be addressed in a new section within the IM regulations related to crack defects.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the consideration of seismicity and manufacturing- and construction-related defects under the IM regulations. After considering these comments as well as recommendations by the GPAC, PHMSA is revising § 192.917(e)(2) to require operators monitor operating pressure cycles and periodically determine if the cyclic fatigue analysis is valid at least once every 7 calendar years, not to exceed 90 months, as necessary. PHMSA is also deleting a reference to the MAOP reconfirmation requirements in § 192.624 and is referencing the new § 192.712 for fracture mechanics analysis. PHMSA believes these changes are consistent with current IM requirements and will increase regulatory flexibility while maintaining pipeline safety.

In § 192.917(e)(3), PHMSA deleted a cross-reference to the MAOP reconfirmation requirements in § 192.624 and replaced it with a requirement to prioritize the pipeline segment if it has experienced an in-service reportable incident since its most recent successful subpart J pressure test due to an original manufacturing-related defect; or a construction-, installation-, or fabrication-related defect. This clarifies that the IM requirement in § 192.917(e)(3) is not part of the MAOP reconfirmation standards. Although the GPAC asked PHMSA to consider removing the term ''hydrostatic'' and allow other testing procedures, PHMSA is retaining the term ''hydrostatic'' in § 192.917(e)(3), as the proposed revision, as written, addresses NTSB recommendation P–11–15. The NTSB specifically recommended that PHMSA amend part 192 so that manufacturing- and construction-related defects can only be considered stable following a postconstruction hydrostatic pressure test of at least 1.25 times the MAOP. Therefore, deleting the word ''hydrostatic'' would be contrary to the letter and intent of this NTSB recommendation.

For the requirements related to ERW pipe in § 192.917(e)(4), PHMSA has deleted the phrase related to pipe body cracking and deleted a cross-reference to the MAOP reconfirmation requirements in § 192.624, referencing the new § 192.712 for fracture mechanics analysis instead for cracking and crack-related issues. PHMSA made these changes to streamline the regulations and increase readability.

*D. 6-Month Grace Period for 7-Calendar-Year Reassessment Intervals—§ 192.939*

1. Summary of PHMSA's Proposal

Section 5 of the 2011 Pipeline Safety Act identifies a technical correction amending 49 U.S.C. 60109(c)(3)(B) to allow the Secretary of Transportation to extend the 7-calendar-year IM reassessment interval for an additional 6 months if the operator submits written notice to the Secretary with sufficient justification of the need for the extension. The NPRM proposed to codify this technical correction as required by the statute.

2. Summary of Public Comment

PHMSA received a comment regarding the 6-month grace period for the 7-calendar-year reassessment interval from a trade organization expressing general support of the proposed provisions and requesting that PHMSA clarify that the 6-month extension begins after the close of the 7-calendar-year reassessment interval period, which would be consistent with

the 2011 Pipeline Safety Act revision to the Federal Pipeline Safety Statutes.

At the GPAC meeting on January 12, 2017, the GPAC voted that the proposed changes on the 6-month grace period for the reassessment intervals are technically feasible, reasonable, cost-effective, and practicable, and did not recommend that PHMSA modify these proposed provisions.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the grace period for IM reassessment intervals. After considering the comment and as recommended by the GPAC, PHMSA is retaining the proposed revisions to § 192.939 in this final rule. The proposed rule clearly stated that the 6-month extension begins after the close of the 7-calendar-year reassessment interval period. This is mirrored in PHMSA's frequently asked questions (FAQ) for the IM program,[72] which clarifies that the maximum interval for reassessment may be set using the specified number of calendar years in accordance with the 2011 Pipeline Safety Act. The use of calendar years is specific to gas pipeline reassessment interval years under IM and does not alter the interval requirements that appear elsewhere in the code for various inspection and maintenance requirements.

*E. ILI Launcher and Receiver Safety—§ 192.750*

1. Summary of PHMSA's Proposal

PHMSA determined that more explicit safety requirements are needed when performing maintenance activities that use launchers and receivers for inserting and removing ILI maintenance tools and devices. The current regulations for hazardous liquid pipelines under part 195 have, since 1981, contained safety requirements for scraper and sphere facilities. However, the current regulations for natural gas transmission pipelines do not similarly require controls or instrumentation to protect against an inadvertent breach of system integrity due to the incorrect operation of launchers and receivers for ILI tools, or scraper and sphere facilities. As a result, PHMSA proposed to add a new section to the Federal Pipeline Safety Regulations to require ILI launchers and receivers include a suitable means to relieve pressure in the barrel and either a means to indicate the pressure in the barrel or a means to prevent opening if pressure has not been relieved. While most launchers and receivers are already equipped with such devices, some older facilities may not be so equipped. Under the proposed provisions, operators would be required to have this safety equipment installed consistent with current industry practice.

2. Summary of Public Comment

Stakeholders, including TPA, provided input on PHMSA's changes to the requirements for safety when performing maintenance activities that utilize launchers and receivers for inserting and removing inspection and maintenance tools and devices. TPA supported the proposed safety additions to the regulations but stated that § 192.750 should be included within the regulations for pipeline components rather than the subpart for pipeline maintenance. In addition, TPA suggested PHMSA revise the language to allow 18 months after the effective date of the rule to comply with the provisions. This change would allow for more time to plan, budget, and complete the work safely. Another commenter recommended these provisions be effective prior to the next time an operator would use an applicable launcher or receiver. Public interest groups and others, such as PST and NAPSR, had broad support for the proposed provisions regarding ILI launcher and receiver safety.

At the GPAC meeting on January 12, 2017, a public commenter suggested clarification on PHMSA's use of the term ''relief device'' or ''relief valve'' within the proposed provisions. During discussion, the committee noted that there are requirements for ''relief valves'' elsewhere in the code, and calling a needed safety device for ILI launchers and receivers a ''relief valve'' would then make it subject to those additional requirements. Based on that discussion, the committee recommended that PHMSA modify the proposed rule to clarify that the rule does not require ''relief valves'' or use ''relief valve'' as an officially defined term within the provision, as those terms have distinct meanings within the broader context of the Federal Pipeline Safety Regulations.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding launcher and receiver safety. After considering these comments and the GPAC input, PHMSA is finalizing the provisions as they were proposed in the NPRM, with the exception of a compliance date 1 year after the effective date of the rule. This approach avoids disruption of work planned within a year of the effective date of the rule, and it allows operators that are not planning work until beyond the 1-year grace period to implement the upgrade before the next planned use. Therefore, special modification work would not be required before the launcher or receiver is needed. Operators would not be required to perform the upgrades until the launcher or receiver is to be used.

Consistent with the originally proposed language, this final rule does not use the term ''relief valve'' and instead uses the generic phrase ''device capable of safely relieving pressure.'' The proposed rule effectively avoided any potential for confusion with respect to the defined term ''relief valve'' and the requirements associated with those components, therefore no change to this wording was necessary for this final rule.

PHMSA believes that this requirement is appropriately located in subpart M, ''Maintenance,'' of part 192, and notes that the comparable requirement in part 195 for hazardous liquid pipelines is located in subpart F, ''Operations and Maintenance.''

*F. MAOP Exceedance Reporting—§§ 191.23, 191.25*

1. Summary of PHMSA's Proposal

Section 23 of the 2011 Pipeline Safety Act requires that operators report each exceedance of a pipeline's MAOP beyond the build-up allowed for the operation of pressure-limiting or control devices. On December 21, 2012 (77 FR 75699), PHMSA published Advisory Bulletin ADB–2012–11 to advise operators of their responsibility under section 23 of the 2011 Pipeline Safety Act to report such exceedances. The advisory bulletin further stated that the reporting requirement is applicable to all gas transmission pipeline facility owners and operators. PHMSA advised pipeline owners and operators to submit this information in the same manner as safety-related condition reports. The information pipeline owners and operators submit should comport with the information listed at § 191.25(b), and pipeline owners and operators submitting such information should use the reporting methods listed at § 191.25(a).

Although this provision of the 2011 Pipeline Safety Act is self-executing, PHMSA proposed to revise the safety-related condition reporting requirements under part 191 to codify this requirement and harmonize part 191 with the statutory requirement by eliminating the reporting exemption and to provide a consistent procedure,

[72] FAQ–41 at *https://primis.phmsa.dot.gov/gasimp/faqs.htm.*

format, and structure for operators to submit such reports.

2. Summary of Public Comment

Trade associations, citizen groups, and pipeline industries generally supported PHMSA's codification of the statutory reporting requirements for MAOP exceedances for transmission lines.

API and GPA objected to MAOP exceedance reporting requirements for unregulated gathering pipelines. GPA stated that PHMSA did not sufficiently weigh the benefits of reporting MAOP exceedance against the hurdles to compliance for unregulated gathering pipelines. GPA also questioned whether PHMSA has the authority to require unregulated gathering pipelines report MAOP exceedance, since complying with this reporting requirement would necessitate that unregulated gathering pipelines establish MAOP, which they are currently not required to do. Citizen and other safety groups, including Earthworks, NAPSR, the Pipeline Safety Coalition, and PST, supported the inclusion of unregulated gathering pipelines in this section, stating that it would improve pipeline safety.

Several commenters suggested editorial revisions to streamline and improve these provisions. NGA expressed concern that the proposed provisions could apply to distribution systems and suggested that PHMSA clarify that reporting requirements for MAOP exceedance only apply to transmission pipelines. Additionally, Spectra Energy Partners requested that PHMSA require reporting of MAOP exceedances only when the operator is unable to respond to MAOP exceedances within the timeframe required elsewhere in part 192.

One operator expressed concern that the proposed change would require operators to submit additional safety-related condition reports anytime the operator had to implement a pressure reduction upon discovering an immediate condition.

At the GPAC meeting on June 7, 2017, there was brief discussion on whether the 5-day reporting requirement was too prescriptive, but the committee agreed that PHMSA was properly implementing the statutory requirement as written and intended by Congress. Following that discussion, the committee recommended that PHMSA modify the proposed rule to clarify that the MAOP exceedance reporting provisions do not apply to gathering lines.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding MAOP exceedance reporting. The 2011 Pipeline Safety Act mandates that an operator report MAOP exceedances on gas transmission lines, regardless of whether the operator corrects the safety-related condition through repair or replacement. After considering the comments PHMSA received on the NPRM and as recommended by the GPAC, PHMSA is inserting the word ''only'' in the additional MAOP exceedance reporting provision in § 191.23(a)(10) to make it clearer that the amended requirement applies only to gas transmission lines and not to gathering or distribution lines. Conforming changes were made to § 191.23(a)(6). PHMSA notes that the prior safety-related condition reporting requirements and exceptions related to pressure exceedances for gathering and distribution lines have not been altered.

*G. Strengthening Assessment Requirements—§§ 192.150, 192.493, 192.921, 192.937, Appendix F*

*i. Industry Standards for ILI—§§ 192.150, 192.493*

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to revise § 192.150 to incorporate by reference a NACE Standard Practice, NACE SP0102–2010, ''In-line Inspection of Pipelines,'' to promote a higher level of safety by establishing consistent standards for the design and construction of pipelines to accommodate ILI devices.

In § 192.493, PHMSA proposed requirements for operators to comply with the requirements and recommendations of API STD 1163, In-line Inspection Systems Qualification Standard; ANSI/ASNT ILI–PQ–2005, In-line Inspection Personnel Qualification and Certification; and NACE SP0102–2010, In-line Inspection of Pipelines. PHMSA also proposed to allow operators to conduct assessments using tethered or remotely controlled tools.

2. Summary of Public Comment

NAPSR supported the proposed provisions in § 192.493, commenting that the incorporation by reference of the three consensus standards provides enhanced guidance for the determination of adequate procedures and qualifications related to in-line inspections of transmission pipelines.

Some industry representatives commented that it is unnecessary to incorporate American Society for Nondestructive Testing (ASNT) ILI–PQ by reference since API 1163 requires that providers of ILI services ensure that their employees are qualified. Others commented that PHMSA should exclude requirements contained in section 11 of API 1163, which pertains to quality management systems. Lastly, industry representatives asserted that ILI vendors may not be able to meet the 90 percent tool tolerance specified in the referenced standards, and PHMSA should relocate these proposed requirements to a different subpart.

Several commenters noted that if PHMSA required compliance with ''the requirements and recommendations of'' the recommended practices and standards, it would create enforceable requirements out of actions that the standards themselves did not necessarily mandate.

During the GPAC meeting of March 2, 2018, the committee recommended PHMSA revise this provision by striking the phrase ''the requirements and the recommendations of,'' so that recommendations within the incorporated standard would not be made mandatory requirements.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the incorporation by reference of industry standards for ILI. After considering these comments and as recommended by the GPAC, PHMSA is deleting the phrase ''the requirements and the recommendations of'' from §§ 192.150 and 192.493 so that the recommendations within the incorporated standard would not be made mandatory requirements.

PHMSA believes that the inclusion of the NACE standard at § 192.150 will help to address the NTSB recommendation P–15–20, which asked PHMSA to identify all operational complications that limit the use of ILI tools in piggable pipelines, develop methods to eliminate those complications, and require operators use such methods to increase the use of ILI tools. PHMSA also believes that more pipelines will become piggable in the future as the nation's pipeline infrastructure ages and is eventually replaced. A current provision in the regulations requires that all new and replaced pipeline be piggable, and as operators address higher-risk infrastructure through this rulemaking, there is a likelihood that some previously unpiggable pipe will be replaced.

PHMSA disagrees that ASNT ILI–PQ is unnecessary. The foreword of API 1163 states ''*This standard serves as an umbrella document to be used with and complement companion standards.*

*NACE SP0102, In-line Inspection of Pipelines and ASNT ILI–PQ, In-line Inspection Personnel Qualification and Certification.*'' These three standards are complimentary and are intended to be used together. PHMSA also disagrees that quality requirements should be excluded from the rule. One of the fundamental objectives of this rule is to establish a minimum standard for quality in conducting ILI. Also, the consensus industry standard API 1163 only uses 90 percent tool tolerance as an example to illustrate key points but does not specify or establish a minimum standard tool tolerance of 90 percent.

*G. Strengthening Assessment Requirements—§§ 192.150, 192.493, 192.921, 192.937, Appendix F*

*ii. Expand Assessment Methods Allowed for IM—§§ 192.921(a) and 192.937(c)*

1. Summary of PHMSA's Proposal

In the current Federal Pipeline Safety Regulations, § 192.921 requires that operators with pipelines subject to the IM rules must perform integrity assessments. Currently, operators can assess their pipelines using ILI, pressure test, direct assessment, and other technology that the operator demonstrates provides an equivalent level of understanding of the condition of the pipeline.

In the NPRM, PHMSA proposed to require that direct assessment only be allowed when the pipeline cannot be assessed using ILI. As a practical matter, direct assessment is typically not chosen as the assessment method if the pipeline can be assessed using ILI. Further, PHMSA proposed to add three additional assessment methods to the regulations:

1. A spike hydrostatic pressure test, which is particularly well-suited to address stress corrosion cracking and other cracking or crack-like defects;
2. Guided Wave Ultrasonic Testing (GWUT), which is particularly appropriate in cases where short segments such as road or railroad crossings are difficult to assess; and
3. Excavation with direct *in situ* examination.

2. Summary of Public Comment

NAPSR expressed its support for the proposed provisions. Many comments expressed concerns with the proposed provisions for the assessment methods regarding uncertainties in reported results. Multiple commenters stated that operators should be able to run the appropriate assessment or ILI tools for the threats that are known or likely to exist on the pipeline based on its condition. Atmos Energy commented that ASME/ANSI B318.S requirements should be the standard to which operators are required to follow. Enable Midstream Partners proposed that PHMSA add ''significant'' to make a distinction between significant and insignificant threats and offered specific language to address its concerns. PG&E commented on the proposed provisions for ILI assessments, requesting that PHMSA provide guidance as to how to explicitly consider the numerous uncertainties associated with ILI regarding anomaly location accuracy, detection thresholds, and sizing accuracy, and suggested that PHMSA allow industry guidance and best practices to be used where practical. Some commenters expressed concern that PHMSA proposed to add requirements surrounding the detection of anomalies that many ILI tools could not meet. These commenters stated that there are no tools designed to find girth weld cracks and that most incidents caused by girth weld cracks have third-party excavation damage as a contributing factor. Commenters further stated that this is a threat that is best handled by procedures that require caution around girth welds during excavation and backfilling procedures.

Several entities commented on the proposed qualification requirements under the ILI assessment method provisions, expressing concern that they are redundant with existing operator qualification regulations under the IM regulations at § 192.915 and the proposed revisions to § 192.493 incorporating the industry ANSI standard on ILI personnel qualification. Multiple entities proposed changes to remove such redundancies and improve clarity.

Commenters requested clarification that the proposed text in the IM assessment provisions ''apply one or more of the following methods for each threat to which the covered segment is susceptible'' does not mean that at least one assessment is required for each threat. Additionally, commenters disagreed with adding an explicit requirement for a ''no objection'' letter as notification of using ''other technology'' and suggested that if this notification is required, operators should be allowed to proceed with the technology if they do not receive a ''no objection'' letter from PHMSA within a certain period.

The NTSB commented that PHMSA's proposal to revise the pipeline inspection requirements to allow the direct assessment method to be used only if a line is not capable of inspection by internal inspection tools directly conflicts with the recommendations of their pipeline safety study, *Integrity Management of Gas Transmission Lines in High Consequence Areas,* which recommended that PHMSA develop and implement a plan for eliminating the use of direct assessment as the sole integrity assessment method for gas transmission pipelines. The CPUC asserted that direct assessment must always be supplemented with other methods, such as ILI or a pressure test.

Many industry entities argued that PHMSA's proposed changes to the IM assessment provisions limiting direct assessment to unpiggable lines are not technically justified. Several entities, including AGA and API, believed it was unreasonable to limit operators' ability to use direct assessment for pipeline assessments unless all other assessment methods have been determined unfeasible or impractical. PG&E requested that PHMSA recognize that although a pipeline may be considered piggable, it does not mean that ILI technology is available, and they provided specific suggestions for revision. Similarly, AGA stated that free-swimming flow-driven ILI tools are often not compatible with intrastate transmission lines for several reasons, stating that certain conditions must exist to assess a pipeline by ILI and obtain valid data, including adequate flow rate, lack of bends or valves that would impede diameter, and ability to insert and remove the tool from the system. Therefore, AGA provided a suggested definition for ''able to accommodate inspection by means of an instrumented in-line inspection tool.''

Trade associations asserted that direct assessment is a proven assessment technique that works in addressing the threat of corrosion. INGAA stated that the criteria for when direct assessment can be used should depend on whether direct assessment can provide the necessary information about the pipe condition rather than whether other assessment methods can be used. AGA commented that it is not aware of any industry study that would suggest that direct assessment does not work effectively to identify corrosion defects in certain circumstances, which it describes in its comments. In addition, AGA stated that direct assessment is a predictive tool that identifies areas where corrosion could occur, including time-dependent threats, while other methods can only detect where corrosion has resulted in a measurable metal loss. Atmos Energy commented that limiting the use of direct assessment only to those pipeline segments that are not capable of

inspection by internal inspection tools is not consistent with other requirements of subpart O.

At the GPAC meeting on December 15, 2017, the committee voted to revise the ''no objection'' process to incorporate language stating that, if an operator does not receive an objection letter from PHMSA within 90 days of notifying PHMSA of an alternative sampling approach, the operator can proceed with their method. Additionally, the GPAC, during the meeting on March 2, 2018, recommended that PHMSA change these provisions to clarify that operators should select the appropriate assessment based on the threats to which the pipeline is susceptible and remove certain language that is duplicative to another existing section of the regulations. The GPAC also recommended that PHMSA clarify that direct assessment is allowed where appropriate but may not be used to assess threats for which the method is not suitable. Further, the GPAC wanted PHMSA to incorporate the notification and objection procedure and 90-day timeframe that the GPAC approved under the material properties verification requirements.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the inclusion of additional assessment methods for integrity assessments. After considering these comments and as recommended by the GPAC, PHMSA is clarifying in this final rule that operators should select the appropriate assessment method based on the threats to which the pipeline is susceptible and is removing language regarding the qualification of persons reviewing ILI results that is duplicative with existing § 192.915. PHMSA is also clarifying in § 192.921 that direct assessment is allowed where appropriate but may not be used to assess threats for which the method is not suitable, such as assessing pipe seam threats. In addition, PHMSA incorporated the notification procedure under § 192.18 with the 90-day timeframe and objection process.

PHMSA notes that other comments regarding the determination of suitable assessment methods for applicable threats and ILI tool capabilities relate to long-standing IM regulations that were not proposed for revision. PHMSA did provide substantial additional guidance and standards for implementing the integrity assessment requirements for ILI by incorporating the industry standards in § 192.493, as discussed in the previous sections.

*G. Strengthening Assessment Requirements—§§ 192.150, 192.493, 192.921, 192.937, Appendix F*

*iii. Guided Wave Ultrasonic Testing—Appendix F*

1. Summary of PHMSA's Proposal

When expanding assessment methods for both HCA and non-HCA areas, PHMSA proposed to add three additional assessment methods, one being GWUT. Under the existing regulations, GWUT is considered ''other technology,'' and operators must notify PHMSA prior to its use. PHMSA developed guidelines for the use of GWUT, which have proven successful, and proposed to add them under a new Appendix F to part 192—Criteria for Conducting Integrity Assessments Using Guided Wave Ultrasonic Testing. As such, future notifications to PHMSA would not be required, representing a cost savings for operators.

2. Summary of Public Comment

Multiple entities commented in support of using GWUT and the inclusion of proposed Appendix F. NAPSR expressed its agreement with and support for the proposed Appendix. American Public Gas Association (APGA) applauded PHMSA for including guidelines for GWUT; however, it cautioned that the guidance only specifies Guided Ultrasonics LTD (GUL) Wavemaker G3 and G4, which use piezoelectric transducer technology, as acceptable technology. APGA recommended that Magnetostrictive Sensor technology also be included as an acceptable guided wave technology, stating that at least one of its members reported good results using this technology for guided wave assessment of an unpiggable segment of a transmission pipeline.

A commenter noted that the requirement of both torsional and longitudinal wave modes in all situations introduces unnecessary complexity into the GWUT data interpretation process. The commenter further noted that PHMSA should specify that torsional wave mode is the primary wave mode when utilizing GWUT, and that longitudinal wave mode may be used as an optional, secondary mode. Other commenters recommended additional changes to Appendix F, such as stating that qualified GWUT equipment operators are trained to understand the strengths, weaknesses, and proper applications of each wave mode and should have the freedom to select the appropriate and most effective wave mode(s) for the given situation. PG&E requested that PHMSA recognize that this technology is used at locations other than casings as implied in the introductory paragraph and commented that double-ended inspections are not always required to meet the specification.

During the GPAC meeting on December 15, 2017, the GPAC agreed with the provisions related to Appendix F and GWUT but recommended PHMSA revise the ''no objection'' letter process.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding GWUT. After considering these comments and as recommended by the GPAC, PHMSA is removing the reference to GUL equipment for clarity. PHMSA is modifying the notification process to allow operators to proceed with an alternative process for using GWUT if the operator does not receive an objection letter from PHMSA within 90 days of notifying PHMSA in accordance with § 192.18. PHMSA believes this change increases regulatory flexibility while maintaining pipeline safety.

In this final rule, PHMSA is retaining the requirement to use both torsional and longitudinal wave modes since that is a long-standing requirement in PHMSA's guidance for accepting GWUT as an allowed technology under an ''other technology'' notification. Also, PHMSA recognizes that GWUT is used at locations other than casings, although it is most often deployed for the integrity assessment of cased crossings. However, double-ended inspections would not always be required to meet Appendix F, and Appendix F does not require double-ended inspections. Double-ended inspections are not necessary as long as the guided wave ultrasonic test covers the entire length of the assessment as well as the ''dead zone'' where the equipment is set up.

The proposed rule already addresses validation of operator training, but in this final rule, PHMSA is deleting the sentence ''[t]here is no industry standard for qualifying GWUT service providers'' to provide clarity.

*H. Assessing Areas Outside of HCAs—§§ 192.3, 192.710*

*i. MCA Definition—§ 192.3*

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA introduced a new definition for a Moderate Consequence Area (MCA). The proposed rule defined an MCA as an onshore area, not meeting the definition of an HCA, that is within a potential impact circle, as defined in § 192.903, containing 5 or more buildings intended

for human occupancy; an occupied site; or a right-of-way for a designated interstate, freeway, expressway, or other principal four-lane arterial roadway as defined in the Federal Highway Administration's ''Highway Functional Classification Concepts, Criteria and Procedures.'' PHMSA proposed that requirements for data analysis, assessment methods, and immediate repair conditions within these MCAs would be similar to requirements for HCA pipeline segments but with longer timeframes so that operators could properly allocate resources to higher-consequence areas. PHMSA proposed that the 1-year repair conditions that currently exist for HCA pipeline segments would be 2-year repair conditions when found on MCA pipeline segments. These changes would ensure the prompt remediation of anomalous conditions that could potentially affect people, property, or the environment, commensurate with the severity of the defects, while still allowing operators to allocate their resources to HCAs on a higher-priority basis.

2. Summary of Public Comment

The NTSB stated that the proposed provisions to create an MCA category and include a highway size threshold in the definition of an MCA accomplishes part of what the NTSB intended in Safety Recommendation P–14–1. However, the NTSB objected to the proposed highway coverage as being limited to four lanes and stated its support of expanding the highway size threshold as they had specifically recommended in P–14–1. The NTSB asserted that the proposed language would exclude the category of other principal arterial roadways wider than four lanes when, in fact, the wider roadways should be included.

INGAA supported the addition of an MCA category to the Federal Pipeline Safety Regulations but recommended several modifications to the proposed definition. INGAA suggested PHMSA should limit the definition of an MCA to only those pipeline segments that could be assessed through an ILI inspection, amend the MCA definition to avoid ambiguity regarding residential structures, remove ''outside areas and open structures'' from the portion of the definition of MCA related to ''identified sites,'' include timeframes for incorporating changes to existing MCAs, and permit operators to use the edge of the pavement rather than the highway right-of-way to determine if a roadway intersects with a Potential Impact Circle.

AGA, API, APGA, and several pipeline entities agreed with INGAA's comments on the modification to PHMSA's proposed MCA definition. Additionally, AGA, API, and APGA emphasized PHMSA should remove the reference to ''a right-of-way'' for the designated roadways, commenting that the MCA definition could be interpreted so that if a Potential Impact Circle touches any portion of the roadway right-of-way, the pipeline segment is an MCA. That interpretation would put undue burden on operators in areas where its pipelines lay at or near the edge of the public right-of-way that would not normally contain ''persons or property'' that would sustain damage or loss in the event of a pipeline failure. Further, API added that the reference to ''a right-of-way'' is problematic because roadway right-of-ways are variable, cannot be seen with the naked eye, and are often not included in publicly available data sources.

Commenters also disagreed with the definition of ''occupied site'' within the MCA definition. GPA asserted that the criterion used in the MCA definition should be limited to interstate highways, and the definition of ''occupied site'' should be eliminated to more clearly distinguish between MCAs and HCAs and to provide greater clarity in identifying and managing MCAs. Similarly, Enlink Midstream commented that PHMSA should eliminate the definition of occupied site and remove this criterion from the proposed definition of MCA. Doing so would permit the continued focus on HCAs that the IM process was intended to accomplish. AGL Resources also expressed concern with the proposed definition of occupied site, commenting that this definition could require operators to effectively perform a census-like identification of structures to verify the count of persons within that structure.

There were conflicting viewpoints on where the definition of MCA should be placed in the regulations. API and other commenters stated that they preferred a new category and a distinct definition for MCA as opposed to expanding the definition of HCA or making a subcategory in the HCA definition for MCAs, whereas SoCalGas encouraged expanding the scope of HCAs rather than creating a new category.

Enterprise Products commented PHMSA should move the MCA definition to subpart O and remove the ''occupied site'' criteria from the proposed definition of MCA, which would provide more distinction between MCAs and HCAs in the regulations and would also more appropriately place them under the IM regulations.

AGA and several other organizations expressed concern over the resource-intensive administrative task of identifying MCAs, especially pertaining to recordkeeping requirements. API asserted that the proposed provisions would limit operators' ability to prioritize resources for pipelines that pose the highest risk. They further stated that while they agree with the inclusion of all Class 3 and Class 4 locations, occupied sites, and major roadways in the definition of MCA, they disagree with the proposed threshold of five buildings intended for human occupancy within the potential impact radius. They suggested that a more appropriate threshold would be more than 10 buildings intended for human occupancy, as that number is consistent with longstanding part 192 class location designations.

Multiple groups, such as AGI, INGAA, and Cheniere Energy, also stated objections over various aspects of defining and identifying MCAs and provided suggestions for revised language, including several broad clarifications or deletions to the definition. In addition to requesting modifications to the definition of MCA, INGAA objected to the provided geographic information system (GIS) layer for right-of-way determination, and suggested that PHMSA provide one database for roadway classification. Numerous trade associations and pipeline companies asked PHMSA to consider a qualifier that the definition of MCA only applies to pipelines operating at greater than 30 percent SMYS. EnLink Midstream suggested using a threshold level of 16-inch pipe diameter to identify pipelines that pose a greater risk.

The GPAC had a comprehensive discussion on the MCA definition during the meeting on March 2, 2018, and approved of the definition with some changes. First, the GPAC recommended changing the highway description within the definition to remove reference to the roadway ''rights-of-way'' and to add language so that the highway consists of ''any portion of the paved surface, including shoulders.'' Secondly, the GPAC recommended clarifying that highways with 4 or more lanes are included, and they also wanted PHMSA to work together with the Federal Highway Administration to provide operators with clear information relative to this aspect of the rulemaking and discuss it in the preamble. The GPAC also recommended that PHMSA discuss in the preamble what they expect the definition of ''piggable'' to be, as it is critical for aspects of the MCA

definition as it relates to MAOP confirmation. Finally, the GPAC recommended PHMSA modify the term ''occupied sites'' in the MCA definition and in the definitions section of part 192 by removing the language referring to ''5 or more persons'' and the timeframe of 50 days and tying the requirement into the HCA survey for ''identified sites'' as discussed by GPAC members and PHMSA at the meeting. The committee noted that such site identification could be made through publicly available databases and class location surveys. The committee suggested PHMSA consider the necessary sites and enforceability of the definition per direction by the committee members.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the definition of moderate consequence area. After considering these comments and the GPAC input, PHMSA is modifying the highway description within the definition to remove reference to the roadway ''rights-of-way'' and to add language so that the highway consists of ''any portion of the paved surface, including shoulders.'' Also, PHMSA is specifying that highways with 4 or more lanes are included. PHMSA believes these changes provide additional clarity.

Per the GPAC's request that PHMSA provide additional guidance on what roadways are included in the MCA definition as it pertains to ''other principal roadways with 4 or more lanes,'' PHMSA notes that the Federal Highway Administration defines *Other Principal Arterial* roadways [73] as those roadways that serve major centers of metropolitan areas, provide a high degree of mobility, and can also provide mobility through rural areas. Unlike their access-controlled counterparts (interstates, freeways, and expressways), abutting land uses can be served directly. Forms of access for *Other Principal Arterial* roadways include driveways to specific parcels and at-grade intersections with other roadways. For the most part, roadways that fall into the top three functional classification categories (Interstate, Other Freeways & Expressways, and Other Principal Arterials) provide similar service in both urban and rural areas. The primary difference is that there are usually multiple arterial routes serving a particular urban area, radiating out from the urban center to serve the surrounding region. In contrast, an expanse of a rural area of equal size would be served by a single arterial. The MCA definition does not include all roadways that meet this definition but instead is limited to those roadways meeting this definition that have four or more lanes.

With respect to ''occupied sites,'' PHMSA evaluated the comments and the GPAC discussion and concluded that including occupied sites within the MCA definition was not necessary. Industry representatives on the GPAC asserted that most locations meeting the definition of occupied site are, as a practical matter, already included as an identified site and designated as an HCA. Commenters suggested most operators find it expedient to declare sites similar to occupied areas as HCAs instead of counting the specific occupancy of such locations to see if they meet the occupancy standard over the course of a year. Operators then monitor occupancy in subsequent years for changes that might change the site's status as an occupied site. Such an approach would require fewer resources and be more conservative from a public safety standpoint. Based on these comments, PHMSA is persuaded that including another category of locations, similar to identified sites in HCAs but with a lower occupancy standard of 5 persons, is unnecessarily burdensome without a comparable decrease in risk.

PHMSA disagrees that the MCA definition should be moved to subpart O. The term is used in sections outside of subpart O. Including the MCA definition in § 192.3 is necessary for it to apply to the sections in which it is used throughout part 192.

*H. Assessing Areas Outside of HCAs—§§ 192.3, 192.710*

*ii. Non-HCA Assessments—§ 192.710*

1. Summary of PHMSA's Proposal

PHMSA proposed to add a new § 192.710 to require that pipeline segments in Class 3 or Class 4 locations, and piggable segments in MCAs, be initially assessed within 15 years and no later than every 20 years thereafter on a recurring basis. PHMSA also proposed to require assessments in these areas be conducted using the same methods that are currently allowed for HCAs. PHMSA has found that operators have assessed significant non-HCA pipeline mileage in conjunction with performing HCA integrity assessments in the same pipeline. Therefore, PHMSA proposed to allow the use of those prior assessments of non-HCA pipeline segments to comply with the new § 192.710.

In effect, to this limited population of pipeline segments outside of HCAs, PHMSA proposed to expand the applicability of IM program elements related to baseline integrity assessments, remediating conditions found during integrity assessments, and periodic reassessments. In addition, under the proposed provisions, MCAs would be subject to other requirements related to the congressional mandates, including material properties verification and MAOP reconfirmation. Any assessments an operator would conduct to reconfirm MAOP under proposed § 192.624 would count as an initial assessment or re-assessment, as applicable, under the proposed requirements for non-HCA assessments.

2. Summary of Public Comment

The NTSB and multiple citizen groups supported the expansion of IM elements to gas transmission pipelines in areas outside those currently defined as HCAs. However, several entities, including PST, stated that applying a limited suite of IM tools to these areas was insufficient and requested that the full suite of IM elements be applied to the additional pipeline segments. Some citizen groups expressed concern that the 15-year implementation period and 20-year re-inspection period was too long.

While pipeline companies and trade associations generally supported PHMSA's efforts to expand IM elements beyond HCAs, many of them stated concerns over the time and cost required to identify MCAs, the efficacy of the changes, and the language and requirements regarding both the limitation of assessments to pipeline segments accommodating inline inspection tools and (re)assessment periods. Many groups requested a clear, concise set of codified requirements for IM outside of HCAs to simplify identification, recordkeeping, and repairs.

Several commenters provided input on the allowable assessment methods for non-HCAs. AGA suggested that PHMSA create a new subpart consisting of a clear and concise set of codified requirements for the non-HCA assessments, including new definitions regarding the limitation of assessments to pipeline segments accommodating instrumented inline inspection tools. Many trade associations and pipeline companies stated that they thought the direct assessment method could achieve a satisfactory level of inspection in place of costlier in-line inspection,

[73] Federal Highway Administration, Office of Planning, Environment, & Realty (HEP), *Highway Functional Classification Concepts, Criteria and Procedures (2013) https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/section03.cfm#Toc336872980.*

especially given the additional detail added to the in-line inspection assessment method in the proposal. API requested that PHMSA allow operators to rely on any prior assessments performed under subpart O requirements of part 192 in effect at the time of the assessment rather than limit the allowance to ILI. Furthermore, other organizations supported AGA's proposal that mirrors and extends to MCAs the two-methodology approach used to determine HCAs in the existing § 192.903, which allows for identification based on class location or by the pipeline's potential impact radius.

Entities, including API and Atmos Energy, requested clarification regarding assessment periods and reassessment intervals due to the language regarding shorter reassessment intervals ''based on the type [of] anomaly, operational, material and environmental conditions [. . .], or as otherwise necessary.'' Those commenters said that language was vague and subject to varying interpretations, so they suggested revisions to the language for the reassessment intervals. Lastly, AGA suggested that PHMSA define the term ''pipelines that can accommodate inspection by means of an instrumented in-line inspection tool'' used in proposed §§ 192.710 and 192.624, stating that providing the criteria that a pipeline must meet to be able to accommodate an in-line inspection tool would remove uncertainty and inconsistency in determining which pipelines meet PHMSA's proposed qualifier.

The GPAC discussed the provisions related to assessments outside of HCAs during the meeting on March 2, 2018. The GPAC found the provisions to be technically feasible, reasonable, cost-effective, and practicable if PHMSA clarified that direct assessment could be used only if appropriate for the threat being assessed and could not be used to assess threats for which direct assessment is not suitable, and removed the provisions related to low-stress assessments. The GPAC also recommended revising the initial assessment and reassessment intervals for applicable pipeline segments from an initial assessment within 15 years of the effective date of the rule and periodic assessments every 20 years thereafter to an initial assessment within 14 years of the effective date of the rule and periodic assessments every 10 years thereafter. The GPAC stated that the prioritization of initial assessments and reassessments should be based on the risk profiles of the pipelines. The GPAC also wanted PHMSA to apply the assessment and reassessment requirements only to pipelines with MAOPs greater than or equal to 30 percent SMYS.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding integrity assessments outside HCAs. After considering these comments and as recommended by the GPAC, PHMSA is modifying the rule to specify that direct assessment may be used only if appropriate for the threat being assessed and cannot be used to assess threats for which direct assessment is not suitable, such as assessing pipe seam threats. PHMSA made these changes to provide clarity regarding the proper use of direct assessments.

In addition, PHMSA is revising the applicability of § 192.710 to apply only to pipelines with an MAOP of greater than or equal to 30 percent of SMYS. PHMSA made this change because the GPAC recommended it was cost-effective for the provision to only apply to pipe operating above 30% SMYS in Class 3 and 4 locations and because those pipelines present the greatest risk to safety. Because of this modification, PHMSA is withdrawing provisions related to low-stress assessments since they will no longer be applicable.

Based on the comments and recommendations from the GPAC, PHMSA is also modifying the initial assessment deadline and reassessment intervals for applicable pipeline segments to 14 years after the publication date of the rule and every 10 years thereafter, which was reduced from 15 years and 20 years, respectively. PHMSA believes this change increases regulatory flexibility while maintaining pipeline safety. PHMSA is also adding a requirement that the initial assessments must be scheduled using a risk-based prioritization.

PHMSA disagrees with the need to implement a dual approach to MCA identification that would be similar to the ways that HCAs are identified. Subpart O and the IM regulations were first promulgated before pipeline operators had experience with potential impact radius (PIR) techniques, and incorporating an alternative HCA identification method into the original IM regulations using conventional class locations was convenient and appropriate. Pipeline operators now have over 15 years of experience working with the PIR concept; therefore, PHMSA determined using the PIR method for determining MCAs in the definition of MCAs is appropriate. PHMSA also disagrees that a separate subpart would be preferable and is retaining the requirements for MCA assessments in a new § 192.710.

PHMSA believes the requirement to have a shorter reassessment interval is clear and is not modifying that aspect of the rule. PHMSA included a requirement for operators to not automatically default to the maximum reassessment interval but to establish shorter reassessment intervals ''based upon the type anomaly, operational, material, and environmental conditions found on the pipeline segment, or as necessary to ensure public safety'' when appropriate. Operators have been required to perform similar analyses and adjustment of reassessment intervals for HCAs since the inception of the IM regulations in 2003 and should be familiar with this process over 15 years later. PHMSA believes that stating the overarching goal of assuring public safety by evaluating each pipeline and its circumstances and establishing appropriate assessment intervals based on those circumstances provides clear intent and is an appropriate approach.

PHMSA believes that the term ''piggable segment'' is very widely understood in the industry and is not including additional definitions or regulatory language to expand upon this term. PHMSA understands that a pipeline segment might be incapable of accommodating an in-line inspection tool for a number of reasons, including but not limited to short radius pipe bends or fittings, valves (reduced port) that would not allow a tool to pass, telescoping line diameters, and a lack of isolation valves for launchers and receivers. Some unpiggable pipelines can be made piggable with modest modifications, but others cannot be made piggable short of pipe replacement.

PHMSA understands that a pipeline segment is piggable if it can accommodate an instrumented ILI tool without the need for major physical or operational modification, other than the normal operational work required by the process of performing the inline inspection. This normal operational work includes segment pigging for internal cleaning, operational pressure and flow adjustments to achieve proper tool velocity, system setup such as valve positioning, installation of temporary launchers and receivers, and usage of proper launcher and receiver length and setup for ILI tools. In addition, a pipeline segment that is not piggable for a particular threat because of limitations in technology such that an ILI tool is not commercially available, might be piggable for other threats. For example, a pipeline that is unable to accommodate a crack tool might be able

to accommodate a conventional MFL or deformation tool, and thus be piggable for those threats. Launcher and receiver lengths are not a reason for a pipeline to be considered unpiggable, since through a minor modification they can be modified to be piggable, and the removal of launchers or receivers from the pipeline segment does not make a pipeline unpiggable either.

*I. Miscellaneous Issues*

*i. Legal Comments*

The following section discusses industry comments related to legal and administrative procedure issues with the proposed rule.

Summary of Public Comment

Several commenters asserted that the proposed provisions go beyond PHMSA's statutory authority provided by the 2011 Pipeline Safety Act. Many trade associations and pipeline industry entities stated that PHMSA exceeded the congressional mandates in the proposed provisions by imposing retroactive recordkeeping requirements and retroactive material properties verification requirements. These comments are discussed in more detail in their respective sections above.

Commenters asserted that, in the 2011 Pipeline Safety Act, Congress identified specific factors that PHMSA is required to consider when proposing regulations per the statutory mandates, including whether certain proposed provisions would be economically, technically, and operationally feasible, and that the proposed rule did not adequately address these factors. For example, AGA expressed concerns that PHMSA proposed to adopt NTSB recommendations without independently justifying those provisions based on the specific factors required by Congress or providing the reasoning behind adopting said recommendations.

AGA and INGAA also stated that PHMSA did not adequately consider the impact that the Natural Gas Act of 1968 would have on implementation of the proposed rule. Noting that operators are required to obtain permission from FERC before removing pipelines from service or replacing pipelines, these commenters stated that obtaining permissions could hinder operators from quickly performing required tests and repairs. INGAA and AGA also stated that PHMSA did not consult with FERC and State regulators about implementation timelines for certain provisions, which PHMSA is required to do in accordance with 49 U.S.C. 60139(d)(3) because gas service would be affected by the proposed rule.

PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the statutory authority for the proposed rule. With regard to the comments about imposing retroactive recordkeeping requirements and retroactive material properties verification requirements, PHMSA explained in this document that the final provisions of this rule are prospective and do not create retroactive requirements. This topic is discussed in more detail in the respective sections about recordkeeping and material properties verification.

Pertaining to PHMSA's broader authority, Congress has authorized the Federal regulation of the transportation of gas by pipeline in the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*) and established the current framework for regulating pipelines transporting gas in the Natural Gas Pipeline Safety Act of 1968, Public Law 90–481. Through these laws, Congress has delegated the DOT the authority to develop, prescribe, and enforce minimum Federal safety standards for the transportation of gas, including natural gas, flammable gas, or toxic or corrosive gas, by pipeline. As required by law, PHMSA has considered whether the provisions of this rule are economically, technically, and operationally feasible and has provided relevant analysis in the Regulatory Impact Analysis and preamble of this rule.

In accordance with section 23 of the 2011 Pipeline Safety Act, PHMSA consulted with the Federal Energy Regulatory Commission and State regulators as appropriate to establish the timeframes for completing MAOP reconfirmation. As a part of this consultation, PHMSA accounted for potential consequences to public safety and the environment while also accounting for minimal costs and service disruptions. Furthermore, PHMSA will note that both a FERC member and a NAPSR member are on the GPAC, providing both input and positive votes that the provisions were technically feasible, reasonable, cost-effective, and practicable if certain changes were made. As previously discussed, PHMSA has taken the GPAC's input into consideration when drafting this final rule and made the according changes to the provisions.

*I. Miscellaneous Issues*

*ii.—Records*

1. Summary of PHMSA's Proposal

Many pipeline records are necessary for the correct setting and validation of MAOP, which is critically important for providing an appropriate margin of safety to the public. Much of operator and PHMSA data is obtained through testing and inspection under the existing IM requirements. Section 192.917(b) requires operators to gather pipeline attribute data as listed in ASME/ANSI B31.8S—2004 Edition, section 4, table 1. ASME/ANSI B31.8S—2004 Edition, section 4.1 states:

''*Pipeline operator procedures, operation and maintenance plans, incident information, and other pipeline operator documents specify and require collection of data that are suitable for integrity/risk assessment. Integration of the data elements is essential in order to obtain complete and accurate information needed for an integrity management program. Implementation of the integrity management program will drive the collection and prioritization of additional data elements required to more fully understand and prevent/mitigate pipeline threats.*''

However, despite this requirement, there continue to be data gaps that make it hard to fully understand the risks to and the integrity of the nation's pipeline system. Therefore, PHMSA proposed amendments to the records requirements for part 192, specifically under the general recordkeeping requirements, class location determination records, material mechanical property records, pipe design records, pipeline component records, welder qualification records, and the MAOP reconfirmation provisions.

2. Summary of Public Comment

Several commenters provided input on the proposed amendments to the records requirements for part 192. Several public interest groups, including Pipeline Safety Coalition and PST, supported the increased emphasis on recordkeeping requirements, stating that the requirements are a proactive response to NTSB recommendations and are common-sense business best practices.

Several commenters opposed the proposed provisions providing general recordkeeping requirements for part 192. Commenters asserted that these proposed provisions apply significant new recordkeeping requirements on operators by requiring that operators

document every aspect of part 192 to a higher and impractical standard than before. Commenters also stated that the proposed recordkeeping requirements appear to be retroactive and stated that it would be inappropriate to require operators to document compliance in cases where there have not been requirements to document or retain records in the past. Commenters also asserted that the Pipeline Safety Laws at 49 U.S.C. 60104(b) prohibits PHMSA from applying new safety standards pertaining to design, installation, construction, initial inspection, and initial testing to pipeline facilities already existing when the standard is adopted, and that PHMSA does not have the authority to apply these requirements retroactively. These commenters suggested that even the recordkeeping requirements in these non-retroactive subparts could not be changed under PHMSA's current authority. Subsequently, commenters requested that PHMSA confirm that the proposed general, material, pipe design, and pipeline component recordkeeping requirements would not apply to existing pipelines and that recordkeeping requirements for the qualification of welders and qualifying plastic pipe joint-makers would not apply to completed pipeline projects.

Additionally, several commenters also requested that PHMSA clarify that many of the proposed recordkeeping requirements apply only to gas transmission lines. AGA also expressed concern regarding the proposed reference to material properties verification requirements in the proposed general recordkeeping requirements, which, as written, would also require distribution pipelines without documentation to comply with the proposed material properties verification requirements.

Many commenters opposed the proposed application of the term ''reliable, traceable, verifiable, and complete'' in part 192 beyond the requirements for MAOP records, and AGA recommended the deletion of ''reliable, traceable, verifiable and complete'' from proposed provisions under MAOP reconfirmation. Similarly, other commenters, including INGAA, recommended omitting ''reliable'' from the phrase and provided a suggested definition for ''traceable, verifiable, and complete'' records. Additionally, commenters opposed the use of this term in the general recordkeeping requirements at § 192.13, stating that it would apply a new standard of documentation to part 192. Citing a 2012 PHMSA Advisory Bulletin in which PHMSA stated that verifiable records are those ''in which information is confirmed by other complementary, but separate, documentation,'' INGAA requested that PHMSA acknowledge that a stand-alone record will suffice and a complementary record is only necessary for cases in which the operator is missing an element of a traceable or complete record.[74] INGAA also provided examples of records that they believed to be acceptable, and requested that PHMSA includes these examples in the final preamble.

Several commenters also opposed the proposed Appendix A to part 192 that summarizes the records requirements within part 192 and requested that it be eliminated, stating that Appendix A goes beyond summarizing the existing records requirements and introduces several new recordkeeping requirements and retention times. Commenters also asserted that Appendix A should not be retroactive. Some commenters supported the inclusion of Appendix A, saying that it is a much-needed clarification of record requirements and retention. Noting that the title of Appendix A suggests that it is specific to gas transmission lines but that it does include some record retention intervals for distribution lines, NAPSR recommended that Appendix A be expanded to include records and retention intervals for all types of pipelines. Many commenters requested that PHMSA clarify that the proposed changes to Appendix A apply only to gas transmission lines.

Some commenters also opposed the newly proposed recordkeeping requirements for pipeline components at § 192.205. Commenters, including Dominion East Ohio, stated that PHMSA should exclude pipeline components less than 2 inches in diameter, as these small components are often purchased in bulk with pressure ratings and manufacturing specifications only printed on the component or box. They further stated that in doing this, PHMSA would be consistent with its proposed material properties verification requirements. Another commenter stated that these requirements should be eliminated because they are duplicative of the current requirements for establishing and documenting MAOP at § 192.619(a)(1).

Some commenters also opposed the proposed recordkeeping requirements regarding qualifications of welders and welding operators and qualifying persons to make joints in §§ 192.227 and 192.285, stating that keeping these records for the life of the pipeline is not needed, nor are they necessary for the establishment of MAOP.

Issues related to records were discussed during all of the GPAC meetings in various capacities. At the meeting in January 2017, several issues were discussed, including: broad records guidance in a general duties clause might be a good idea in theory but might cause unintended consequences, and they discussed the advisability of addressing necessary record components individually in the context of specific code sections.

The GPAC discussed the proposed addition of ''reliable'' to the phrase ''traceable, verifiable, and complete'' (TVC) record in the proposed rule. The ''TVC'' standard was recommended by the NTSB following the PG&E incident. Changing that standard could potentially derail work being done by operators to meet that traceable, verifiable, and complete record standard.

The GPAC also discussed PHMSA's statutory authority to impose the proposed recordkeeping requirements, even in subparts that are retroactive, because PHMSA is not requiring particular types of design, installation, construction, etc., but is requiring that operators keep records relevant to current operation.

At the GPAC meeting on June 6, 2017, the GPAC discussed the proposed recordkeeping requirements for the qualification of welders and welding operators as well as the qualification of persons making joints on plastic pipe systems. Specifically, the discussion revolved around whether the recordkeeping requirements should be for the life of the pipeline, as proposed in the NPRM, or whether it should be for 5 years. Certain members believed it should be a 5-year requirement to be consistent with other operator qualification requirements, and other members believed that a 5-year requirement would be adequate due to the ''bathtub curve'' phenomenon where pipelines are more likely to fail early or late in their service history. Therefore, having the records for welding qualification within that early period would be sufficient.

Following that discussion, the committee recommended that PHMSA modify the proposed rule to delete the word ''reliable'' from the records standard to now read ''traceable, verifiable, and complete'' wherever that standard is used; clarify that documentation be required to substantiate the current class location under § 192.5(d); and modify the recordkeeping provisions related to the

[74] *https://www.phmsa.dot.gov/regulations-fr/notices/2012-10866*; 77 FR 26822; May 7, 2012, ''Pipeline Safety: Verification of Records.''

qualification of welders and the qualification of persons joining plastic pipe to include an effective date and change the retention period of the necessary records to 5 years.

At the March 2, 2018, meeting, the GPAC recommended that PHMSA withdraw the general duty recordkeeping requirement at § 192.13(e) and Appendix A; modify the recordkeeping requirements for pipeline components to clarify they apply to components greater than 2 inches in nominal diameter; and revise the requirements related to material, pipe design, and pipeline component records to clarify the effective date of the requirements.

At the meeting on March 27, 2018, the GPAC recommended that PHMSA provide guidance in the preamble regarding what constitutes a traceable, verifiable, and complete record. Further, the GPAC recommended PHMSA clarify that the MAOP recordkeeping requirements in the MAOP establishment section at § 192.619(f) apply only to onshore, steel, gas transmission pipelines, and that they only apply to the records needed to demonstrate compliance with paragraphs (a) through (d) of the section. The GPAC suggested PHMSA could remove examples of acceptable MAOP documents from the rule and include that listing in the preamble of the final rule and through guidance materials.

The GPAC also recommended that PHMSA clarify that the MAOP recordkeeping requirements are not retroactive, that existing records on pipelines installed prior to the rule must be retained for the life of the pipeline, that pipelines constructed after the effective date of the rule must make and retain the appropriate records for the life of the pipeline, and that MAOP records would be required for any pipeline placed into service after the effective date of the rule. Further, the GPAC recommended PHMSA revise the rule by changing other sections, including §§ 192.624 and 192.917, to require when and for which pipeline segments missing MAOP records would need to be verified in accordance with the MAOP reconfirmation and material properties verification requirements of the rulemaking.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the proposed records requirements. After considering these comments and as recommended by the GPAC, PHMSA is modifying the rule to withdraw the proposed § 192.13(e) and Appendix A to avoid possible confusion regarding recordkeeping requirements. Also, whenever new recordkeeping requirements are included, PHMSA modified the rule to clarify that the new requirements are not retroactive. To the degree that operators already have such records, they must retain them. Operators must retain records created while performing future activities required by the code.

In addition to these general modifications, with regard to specific records requirements, PHMSA is modifying the rule as follows: (1) In § 192.5(d), operators must retain records documenting the current class location (but not historical class locations that no longer apply because PHMSA agrees they are not necessary). (2) In § 192.67, the rule is being modified to delete reference to ''original steel pipe manufacturing records'' to avoid retroactivity concerns, add wall thickness and seam type to clarify that this manufacturing information must be recorded, and include an effective date to eliminate retroactivity concerns. (3) In § 192.205, records for components are only required for components greater than 2 inches (instead of greater than or equal to 2 inches) (see Section III(A)(i)(3)). (4) In § 192.227, records demonstrating each individual welder qualification must be retained for a minimum of 5 years because PHMSA believes 5 years of welder qualification records are sufficient to evaluate whether systemic issues are present upon inspection and at the start-up of the pipeline. (5) In § 192.285, records demonstrating plastic pipe joining qualifications at the time of pipeline installation in accordance must be retained for a minimum of 5 years because PHMSA believes 5 years of records are sufficient to evaluate whether systemic issues are present upon inspection and at the start-up of the pipeline. (6) In § 192.619, PHMSA clarified that new recordkeeping for MAOP only apply to onshore, steel, gas transmission pipelines. In addition, PHMSA deleted the sentence with examples of records that establish the pipeline MAOP, which include, but are not limited to, design, construction, operation, maintenance, inspection, testing, material strength, pipe wall thickness, seam type, and other related data to prevent redundancies in the regulations as this list is maintained in § 192.607.

PHMSA notes that the recordkeeping requirements in this final rule under §§ 192.67, 192.127, 192.205, and 192.227(c) applicable to gas transmission pipelines will apply to offshore gathering pipelines and Type A gathering pipelines as well. In accordance with this final rule's requirements, operators of such pipelines must keep any of the pertinent records they have upon this rule's issuance, and they must retain any records made when complying with these requirements following the publication of this rule. PHMSA notes that the requirements for creating records in §§ 192.67, 192.127, 192.205, and 192.227(c) are forward-looking requirements. However, and in accordance with this final rule, operators must retain any records they currently have for their pipelines. Any records generated through the course of operation, including, most notably, records generated by the material properties verification process at § 192.607, must also be retained by operators for the life of the pipeline.

As requested by the GPAC, PHMSA considered moving § 192.619(e) to be a subsection of § 192.619(a) and considered referencing § 192.624 in § 192.619(a). However, PHMSA is retaining the proposed paragraph (e) in the final rule and the reference to § 192.624 within § 192.619(e) because it more clearly requires pipeline segments that meet any of the applicability criteria in § 192.624(a) must reconfirm MAOP in accordance with § 192.624, even if they comply with § 192.619(a) through (d). This also avoids the potential for conflict if this requirement were to be placed in a paragraph that applies to gathering lines and distribution lines. It also makes it clear that pipeline segments with MAOP reconfirmed under § 192.624 are not required to comply with § 192.619(a) through (d).

Lastly, throughout this final rule, PHMSA is deleting the word ''reliable'' from the records standard to now read ''traceable, verifiable, and complete'' wherever that description is used. PHMSA issued advisory bulletins ADB 12–06 on May 7, 2012 (77 FR 26822) and ADB 11–01 on January 10, 2011 (76 FR 1504). In these advisory bulletins, PHMSA provided clarification and guidance that all documents are not records and provided additional information on the definition and standard for records. For a document to be a record, it must be traceable, verifiable, and complete. PHMSA provides further explanation of these concepts below.

Traceable records are those which can be clearly linked to original information about a pipeline segment or facility. Traceable records might include pipe mill records, which include mechanical and chemical properties; purchase requisition; or as-built documentation indicating minimum pipe yield

strength, seam type, wall thickness and diameter. Careful attention should be given to records transcribed from original documents as they may contain errors. Information from a transcribed document, in many cases, should be verified with complementary or supporting documents.

Verifiable records are those in which information is confirmed by other complementary, but separate, documentation. Verifiable records might include contract specifications for a pressure test of a pipeline segment complemented by pressure charts or field logs. Another example might include a purchase order to a pipe mill with pipe specifications verified by a metallurgical test of a coupon pulled from the same pipeline segment. In general, the only acceptable use of an affidavit would be as a complementary document, prepared and signed at the time of the test or inspection by a qualified individual who observed the test or inspection being performed.

Complete records are those in which the record is finalized as evidenced by a signature, date or other appropriate marking such as a corporate stamp or seal. For example, a complete pressure testing record should identify a specific segment of pipe, who conducted the test, the duration of the test, the test medium, temperatures, accurate pressure readings, and elevation information as applicable. An incomplete record might reflect that the pressure test was initiated, failed and restarted without conclusive indication of a successful test. A record that cannot be specifically linked to an individual pipeline segment is not a complete record for that segment. Incomplete or partial records are not an adequate basis for establishing MAOP or MOP. If records are unknown or unknowable, a more conservative approach is indicated.

For example, a mill test report must be traceable, verifiable, and complete, which is a typical record for pipelines. For the mill test report to be traceable it would need to be dated in the same time frame as construction or have some other link relating the mill record to the material installed in the pipeline, such as a work order or project identification. For the mill test report to be verified, it would need to be confirmed by the purchase or project specification for the pipeline or the alignment sheet with consistent information. Such an example would be verified by independent records. For the mill test report to be complete, it must be signed, stamped, or otherwise authenticated as a genuine and true record of the material by the source of the record or information, in this example it could be the pipe mill, supplier, or testing lab.

Another common record is a pressure test record, which must be traceable, verifiable, and complete. For the pressure test record to be traceable, it would need to identify a specific and unique segment of pipe that was tested (such as mileposts, survey stations, etc.) or have some other link relating the pressure test to the physical location of the test segment, such as a work order, project identification, or alignment sheet. For the pressure test record to be verified, it would need to be confirmed by the purchase or project specification for the pipeline or the alignment sheet with consistent information. Such an example would be verified by independent records. For the pressure test record to be complete, it should identify a specific segment of pipe, who conducted the test, the duration of the test, the test medium, temperatures, accurate pressure readings, elevation information, and any other information required by § 192.517, as applicable. An incomplete record might reflect that the pressure test was initiated, failed and restarted without conclusive indication of a successful test.

*I. Miscellaneous Issues*

*iii.—Cost/Benefit Analysis, Information Collection, and Environmental Impact Issues*

NPRM Assumptions/Proposals

U.S. Code, title 49, chapter 601, section 60102 specifies that the U.S. Department of Transportation (U.S. DOT), when prescribing any pipeline safety standard, shall consider relevant available gas and hazardous liquid pipeline safety information, environmental information, the appropriateness of the standard, and the reasonableness of the standard. In addition, the U.S. DOT must, based on a risk assessment, evaluate the reasonably identifiable or estimated benefits and costs expected to result from implementation or compliance with the standard. PHMSA prepared a preliminary regulatory impact analysis (PRIA) to fulfill this statutory requirement for the proposed rule and a new regulatory impact analysis (RIA) for this final rule. In addition, PHMSA's Environmental Assessment (EA) is prepared in accordance with NEPA, as amended, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR parts 1500–1508). When an agency anticipates that a proposed action will not have significant environmental effects, the CEQ regulations provide for the preparation of an EA to determine whether to prepare an environmental impact statement or finding of no significant impact.

Summary of Public Comment

Cost Impacts

Several commenters provided input on the cost analysis conducted in the PRIA, providing comments on the structure, assumptions, and unit costs in the PRIA as well as on the lack of accounting for impacts such as the abandonment of pipelines and the cost increase to electricity ratepayers.

Some public interest groups provided input on the cost analysis in the PRIA. EDF stated that the PRIA reasonably addressed uncertainty and lack of information surrounding certain key data assumptions. EDF further stated that the PRIA aligned with Office of Management and Budget guidance on the development of regulatory analysis for rulemakings. They stated that PHMSA used conservative values when making best professional judgments. PST asserted that the costs included in the PRIA for reconfirmation of MAOP, data gathering, record maintenance, and data integration for lines subject to the IM provisions result from the current IM regulations and practices and should not be attributed to this rulemaking. They further stated that the PRIA should be amended to remove these costs related to lines within HCAs.

Several trade associations and industry pipeline entities provided input on the assumptions, methodology, and unit costs used in the PRIA, stating that PHMSA underestimated the cost of complying with the proposed regulations. AGA stated that the organization of the PRIA by ''topic areas'' made it difficult to evaluate the cost estimates of the various provisions of the rule and requested that PHMSA provide a RIA with the final rule that addresses each regulatory section as organized in the preamble. Many commenters, including INGAA, AGA, AGL Resources, and Piedmont, stated that the PRIA underestimated the cost impacts of increased material properties verification, recordkeeping, and MAOP reconfirmation requirements. AGL Resources asserted that complying with the proposed record requirements would involve increased labor and investment costs that should be quantified in the final RIA. AGA stated that it was unclear whether or how the PRIA incorporated material properties verification costs related to material documentation, plan creation, revisions, and testing. NYSEG asserted that the PRIA underestimated the cost impact of the proposed rule on smaller local

distribution companies with combined transmission and distribution systems and estimated that they would have to perform IM elements on 8 times the mileage currently in their IM program. Lastly, INGAA provided a higher cost for MAOP confirmation than was estimated in the PRIA due in large part to their assumption that industry would continue to rely on pressure testing, as they asserted that the proposed methods for ILI and ECA are not feasible.

INGAA, AGA, and API submitted detailed cost analyses to the rulemaking docket, while many other commenters (approximately 40) provided estimated unit costs for various provisions of the proposed rule that were generally higher than the unit costs used in the PRIA. For example, Southwest Gas stated that the costs included in the PRIA for options such as ILI and pressure testing were not representative of the costs to their system. With regard to the cost of integrity assessments, BG&E stated that it would cost them over $1 million per year to perform integrity assessments on the additional 100 miles of MCA transmission pipelines, a total which equates to a higher cost per mile estimate than was used in the PRIA. Additionally, New Mexico Gas Co. stated that the proposed rule would cost their company $5.6 million per year to perform integrity assessments on 528 miles of MCA transmission pipe. Vectren estimated the impact to its transmission system would cost $22 million annually. Lastly, PG&E stated that their forecasted costs to implement the proposed rule are significantly higher than the estimates in the PRIA. PG&E provided a comparison of the PRIA costs with their expected expenditures to comply with many provisions in the proposed rule. They projected the cost of compliance would require an upfront investment of $578 million in addition to $222 million per year (as well as a reoccurring cost of $30 million every 7 years) and stated that, comparatively, the PRIA estimates a present value annualized cost of $47 million per year.

Some stakeholders provided input on the estimated number of miles that PHMSA used to determine the regulatory impact of the provisions in the proposed rule. For example, INGAA stated that it assumed the mileage estimated by PHMSA for estimation of MAOP confirmation, material properties verification, and integrity assessments outside HCAs to be accurate with the addition of reportable in-service incidents since last pressure test data. INGAA also asserted that the mileage estimated for MCA transmission pipes should be done on the per-foot basis instead of on the per-mile basis because these pipes are likely to be an aggregation of short pipeline segments that are 1 mile or shorter in length. The North Dakota Petroleum Council asserted that proposed changes in the definition of onshore gathering lines would dramatically increase the number of miles of regulated gathering wells beyond the mileage estimates in the PRIA.

Some commenters asserted that the financial impact of the proposed rule would be immense and that, because operators would not be able to bear these costs alone, they would likely pass the costs on to the ratepayers. For example, APGA stated that all of their member utilities purchase gas and pay transportation charges to transmission pipelines to deliver gas from the producer to the utility. They asserted that ratepayers would pay for the costs that would be incurred by their transmission suppliers to comply with this rule. Similarly, Indiana Utility Regulatory Commission requested that PHMSA consider the costs to ratepayers in its cost analysis. Other commenters stated that this rule could force operators to take significant portions of their pipelines out of service while they are brought into compliance and that the PRIA failed to recognize that FERC requires interstate natural gas pipelines operators to provide demand charge credits to customers when service is disrupted.

Some commenters stated that the proposed rule may cause pipeline abandonment and that these impacts should be considered in the final RIA. Boardwalk Pipeline stated that if a pipe is no longer economic to operate, but FERC does not grant abandonment authority, a pipeline company would be forced to either operate a pipeline that may not meet PHMSA standards or undertake expensive replacement projects. Boardwalk Pipeline further stated that while operators may seek to recover the costs of replacement projects through rate increases, in a competitive pipeline market where operators are forced to discount their pipeline rates in order to retain customers, these costs might be too great to recover. Similarly, the Independent Petroleum Association of America stated that the PRIA failed to account for the costs that could be incurred by operators if pipeline infrastructure is abandoned because the cost that would be required to comply with the rule would necessitate this abandonment. The Public Service Commission of West Virginia suggested that, should operators abandon wells and pipelines due to the requirements of this proposed rule, it could cause an environmental and economic liability for State regulators if operators abandon wells and pipelines without proper clean up.

Several commenters expressed concern that PHMSA's cost-benefit analysis does not meet the requirements established by the 2011 Pipeline Safety Act and the Administrative Procedures Act (APA). Trade associations stated that the PRIA does not fulfill PHMSA's statutory obligations because it omits relevant costs, relies on incorrect assumptions, and contains multiple inconsistencies. INGAA asserted that the PRIA does not comply with the APA because the finding in the PRIA that the proposed benefits outweigh the costs is contingent on an underestimation of the costs of the proposed rule. INGAA also noted that flawed cost-benefit analysis can be grounds for courts to reject agency rulemakings. INGAA asserted that the proposed rulemaking does not comply with the Paperwork Reduction Act (PRA), because PHMSA's estimate of the information collection burden did not include the costs of these additional recordkeeping requirements for transmission pipeline operators.

Benefit Estimates

PHMSA also received comments on the benefits associated with the proposed rule. Physicians for Social Responsibility expressed their support of the proposed rule and the analysis of reduced accidents and increased worker safety in the PRIA. Additionally, Physicians for Social Responsibility stated that many harmful air pollutants, such as nitrous oxide, sulfur dioxide, particulate matter, formaldehyde, and lead, are all associated with gas pipelines and compressor stations. They further stated that this rule would help reduce or mitigate this pollution and that these public health benefits should be accounted for in the benefits calculations.

Other commenters, including AGA and INGAA, stated that PHMSA overestimated the damage caused by incidents in the quantification of benefits in the PRIA. AGA stated that PHMSA allowed one major incident to skew the data in their benefits analysis and proposed that PHMSA adopt a new approach to quantify the benefits of reduced accidents. INGAA stated that using data from the past 13 years skewed the results and that the most recent 5 years of incident history would more reasonably reflect positive developments in pipeline safety, given that significant developments in pipeline safety have occurred within this time period.

Several commenters provided input on the proposed use of the social cost of carbon and the social cost of methane in the PRIA. EDF and National Resource Defense Council supported the use of the social costs of carbon and methane methodology in the PRIA. However, these commenters stated that the estimates for social costs of carbon and methane were likely too conservative and that the values should be higher than those used in the PRIA. These commenters stated that PHMSA should encourage the Interagency Working Group on Social Cost of Carbon to update regularly the social cost of carbon and social cost of methane as new economic and scientific information emerges. API stated that the proposed use of the social cost of methane to calculate the benefits of emissions reductions was flawed due to the discount rates used by PHMSA. They asserted that PHMSA used low discount rates that led to a liberal damage estimate. In addition, API and Industrial Energy Consumers of America asserted that the social cost of carbon values used by PHMSA inappropriately impose global carbon costs on domestic manufacturers, which damages the industry's ability to compete internationally. AGA stated that the process used to develop the social cost of methane values in the PRIA did not undergo sufficient expert and peer review. INGAA stated that PHMSA overestimated the amount of greenhouse gas emissions that the rule would reduce.

Environmental Impacts

Several commenters noted that the 2011 Pipeline Safety Act mandates that PHMSA consider the environmental impacts of proposed safety standards. Citizen groups stated that the proposed regulation fulfills this statutory obligation and is a step forward in reducing methane emissions from natural gas pipelines. Multiple citizen groups emphasized the consequences of climate change, the high global warming potential of methane, and the responsibility of natural gas systems for a significant portion of U.S. methane emissions. Citizen groups underlined the importance of regulating methane leaks and considering methane's climate implications in natural gas regulations. The Lebanon Pipeline Awareness Group addressed local environmental impacts, requesting that pipelines not be permitted to contaminate agricultural soils.

Trade associations asserted that PHMSA did not fulfill its statutory obligation to consider the full environmental impacts of the proposed safety standards, suggesting that PHMSA failed to consider several topics in the NPRM that would have direct environmental impacts. These commenters claimed that certain topics and their impacts, including IM clarifications, MAOP reconfirmation, and hydrostatic pressure testing, were mischaracterized in the EA, and that PHMSA further underestimated the number of excavations that would need to be made per the proposal as well as the impacts of procuring and disposing of water for hydrostatic tests.

Trade associations further expressed concerns that, while PHMSA had addressed the emissions avoided under the proposed rule, PHMSA had not addressed the extent to which the proposed rule would increase emissions. AGA and INGAA noted that operators need to purge lines of natural gas before conducting hydrostatic tests or removing pipelines from service for replacement or repair. These commenters stated that the proposed regulation would increase methane emissions by increasing the number of hydrostatic tests, pipeline replacements, and pipeline repairs required and asserted that the EA did not take the increased emissions from these blowdowns into account. INGAA asserted that not considering these methane emissions constituted a violation of the 2011 Pipeline Safety Act and failure to ''engage in reasoned decision making.'' INGAA also suggested that the methane emissions resulting from this rulemaking would run counter to President Obama's goals of reducing methane emissions.

EDF and PST commissioned a study from M.J. Bradley & Associates (MJB&A) that calculated the extent to which the proposed rule would result in blowdown emissions. MJB&A found that potential methane emissions resultant from the proposed rule would increase annual methane emissions from natural gas transmission systems by less than 0.1 percent and increase annual methane emissions from transmission system routine maintenance by less than one percent. MJB&A also noted five mitigation methods that if implemented, could decrease blowdown emissions by 50 to 90 percent.[75] MBJ&A calculated that the societal benefits of methane reduction outweighed the mitigation costs for all mitigation options considered. Based on this study, EDF asserted that while the marginal increase in emissions from the proposed rule would be small, the total emissions from blowdowns would nonetheless be significant. They stated that PHMSA should require operators to select and implement one of the mitigation options and report to PHMSA information about their blowdown events, such as the mitigation option selected and the amount of product lost due to blowdowns required by the proposed rule. EDF also stated that if operators do not mitigate blowdown emissions, they should be required to provide an engineering or economic analysis demonstrating why mitigation is deemed infeasible or unsafe.

AGA stated that the EA did not address other environmental impacts resultant from hydrostatic pressure testing. AGA noted two anticipated water-related impacts: (1) Hydrostatic pressure testing's water demand could aggravate water scarcity in already water-scarce environments, and (2), the water used in hydrostatic tests could introduce contaminants if disposed on-site (or be very expensive to transport to off-site disposal). AGA explained that wastewater from hydrostatic tests could include hydrocarbon liquids and solids, chlorine, and metals.

AGA also asserted that the EA did not adequately consider the land disturbances that could result from the proposed hydrostatic testing requirements, nor did it consider that performing inline inspections and modifying pipelines to accommodate inline inspection tools would generate waste and disturb natural lands. AGA explained that operators must clean pipelines prior to conducting inline inspections or modifying pipelines for inline inspection tools and that this cleaning could produce large volumes of pipeline liquids, mill scale, oil, and other debris. AGA expressed concerns that the proposed EA did not discuss these environmental impacts associated with requiring MAOP confirmation, given that PHMSA anticipates that most affected pipelines would verify MAOP using ILI and pressure testing.

AGA also provided input on the local environmental impacts of the proposed increased testing and inspection. AGA expressed concerns that the EA had (1), underestimated the quantity of excavations that would be required under the proposed rule, and (2), inadequately assessed the environmental impacts of those excavations. AGA asserted that the EA had insufficiently considered the extent to which more excavations would generate water and soil waste. AGA also suggested that the proposed rule may

[75] The methods are (1) gas flaring; (2) pressure reduction prior to blowdown with inline compressors; (3) pressure reduction prior to blowdown with mobile compressors; (4) transfer of gas to a low-pressure system; and (5) reducing the length of pipe requiring blowdown by using stopples.

induce operators to modify or replace pipelines and that these modifications and replacements may affect land beyond existing rights of way. AGA asserted that this additional land area should be considered in the EA.

Trade associations raised other technical issues regarding the EA. AGA expressed concerns that PHMSA provided insufficient information about methods used to calculate values in the EA and that this insufficient documentation interfered with stakeholders' ability to provide comments on the values that PHMSA chose. INGAA asserted that the proposed rule fell short of several legal obligations under NEPA, stating that the EA does not provide the required ''hard look'' at environmental impacts, that the EA does not adequately discuss the indirect and cumulative effects of the proposed rule, and that the purpose and need statement in the EA do not fulfill NEPA instructions. INGAA also expressed concern that PHMSA did not consider sufficient regulatory alternatives, stating that the EA considered solely the proposed rule, one regulatory alternative, and the no action alternative. INGAA stated that given the many provisions of the proposed rule, this approach was too limited.

Other Impacts

Some trade associations and pipeline industry entities provided input that the PRIA failed to account for the indirect effects of operators shifting resources to comply with the proposed rule. For example, AGA stated that the PRIA did not consider the potential indirect impacts the rule might impose on distribution lines. They asserted that the magnitude and prescriptiveness of the proposed rule would require distribution companies with intrastate transmission and distribution assets to reassign their limited resources to transmission lines.

Some commenters stated that PHMSA did not consider that the proposed rule would divert resources away from voluntary safety programs their companies are initiating, stating that these voluntary safety measures would be scaled back because of the proposed rule. For example, AGA stated that accelerated pipe replacement programs that replace aging cast iron, unprotected steel pipe, and vintage plastic pipe, would lose resources as operators shift staff and capital to comply with the proposed rule. They further asserted that failing to replace these pipes would delay reductions in methane emissions from old, leaky pipes.

PHMSA Response

Cost Impacts

PHMSA has reviewed the comments related to the RIA for the proposed rule and has revised the final analysis consistent with the final rule and in consideration of the comments. PHMSA addressed the comments received on the RIA in two key ways. First, PHMSA revised many of the requirements in the final rule, including (a) revising or clarifying that the final provisions do not apply to gas distribution or gas gathering pipelines; (b) revising MAOP reconfirmation requirements for grandfathered pipelines to include only those lines with MAOP greater than or equal to 30 percent SMYS; (c) streamlining the process for operators to use an alternative technology for MAOP reconfirmation; (d) removing the term ''occupied sites'' in the MCA definition; and (e) revising the records provisions to remove certain proposed provisions and clarifying that the new requirements are not retroactive. These changes, as well as others made in the final rule, result in less costly and more cost-effective requirements. Second, in response to comments received, PHMSA made several revisions to the analysis conducted in the RIA for the proposed rule, discussed below. Also, in response to comments, PHMSA revised the final RIA to align more closely to the preamble organization.

PHMSA acknowledges the baseline issues associated with establishing MAOP, data collection, and other provisions noted in the comments. In the final RIA, PHMSA is including estimated incremental costs to reconfirm MAOP for lines within HCAs based on a current compliance baseline. Attributing compliance to existing pipeline safety regulations would reduce both the costs and benefits of the final rule. Regarding the comments that the RIA for the proposed rule underestimated the cost impacts of material properties verification, recordkeeping, and MAOP confirmation, as discussed above, the changes to the scope and applicability of the MAOP reconfirmation, data, and recordkeeping provisions result in common-sense, cost-effective requirements. For example, PHSMA designed the final requirements for material properties verification to allow operators the option of a sampling program that opportunistically takes advantage of repairs and replacement projects to verify material properties simultaneously. The final provisions allow, over time, operators to collect enough information to gain significant confidence in the material properties of pipe subject to this requirement.

Further, as discussed under the section regarding the material properties verification process, the final rule removes the applicability criteria of the material properties verification requirements and makes a procedure for obtaining pipeline physical properties and attributes that are not documented in traceable, verifiable, and complete records or for otherwise verifying pipeline attributes when required by MAOP reconfirmation requirements, IM requirements, repair requirements, or other code sections. Therefore, due to the changes made from the proposed rule, the material properties verification requirements mandated by section 23 of the 2011 Pipeline Safety Act represent a cost savings in comparison to existing regulations, although PHMSA has not quantified those savings.

With regard to the operator-provided cost information or estimates of the proposed rule, the commenters' estimates were not transparent enough for PHMSA to discern the assumptions and inputs underlying the estimates. As a result, PHMSA could not reliably confirm whether the cost information accurately reflected the quantity and character of the actions required by the proposed rule. To improve the transparency of the analysis and address commenters' concerns about PHMSA's reliance on best professional judgment in the RIA for the proposed rule, PHMSA contacted five vendors of pipeline inspection and testing services to obtain updated cost estimates for several unit costs that were based on best professional judgement in the RIA for the proposed rule. These vendors provided representative incremental costs associated with the final rule requirements. In the final RIA, PHMSA used prices provided by vendors to estimate unit costs for all MAOP reconfirmation and integrity assessment methods, as well as for upgrades to launchers and receivers.

Regarding MAOP reconfirmation specifically, in the RIA for the proposed rule PHMSA assumed operators would conduct MAOP reconfirmation using either pressure testing or ILI. In the final RIA, based on feedback received during a GPAC meeting,[76] PHMSA assumed that operators would reconfirm MAOP using a mix of all six available compliance methods.

Additionally, in the final RIA, PHMSA analyzed the requirements for MAOP reconfirmation and integrity

[76] GPAC Meeting, March 26–28, 2018. For a transcript of the meeting, see *https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=970.*

assessments outside HCAs for each operator individually based on the information they submitted in their Annual Reports. Based on the information in operator Annual Reports and the final rule requirements for MAOP reconfirmation, some operators will incur less of an impact than indicated by their public comments.

Regarding the comment that the proposed changes to the definition of onshore gathering lines would dramatically increase the number of miles of regulated gathering wells beyond the mileage estimates in the RIA for the proposed rule, this final rule does not change the definition of gathering pipelines.

With respect to pipelines located within MCAs, PHMSA confirmed the analysis of the length of gas transmission pipelines located within MCAs in the RIA for the proposed rule by integrating additional spatial data from the U.S. Census Bureau, U.S. Geological Survey, Environmental Systems Research Institute, and Tele-Atlas North America, Inc. For additional details on the MCA GIS analysis, see section 5.7 of the RIA for the final rule. This allowed PHMSA to confirm the number of impacted miles. Additionally, due to existing state MAOP reconfirmation requirements, PHMSA updated the RIA to reflect that impacts in California are not attributable to the rule. Lastly, PHMSA presented all impacted mileage on a dollar-per-foot basis instead of dollars per mile, based on comments received that these pipeline segments are likely to be an aggregation of short pipeline segments that are a mile or shorter in length.

Regarding the comment that PHMSA underestimated the cost impact of the proposed rule on smaller local distribution companies with combined gas transmission and gas distribution systems, PHMSA conducted an analysis of the rule's impact on small entities by comparing entity-level cost estimates to annual entity revenues and identifying entities for which annualized costs may exceed 1 percent and 3 percent of revenue. As documented in the final Regulatory Flexibility Act (FRFA) analysis, PHMSA relied on conservative assumptions in performing this sales test, which may overstate, rather than understate, compliance costs for small entities. PHMSA found that the final rule will not have a significant economic impact on small entities.

PHMSA does not agree that the final rule requirements constitute a significant energy action. PHMSA agrees with the comment that the costs would be passed on to ratepayers; however, PHMSA disagrees that these costs would be immense. E.O. 13211 requires agencies to prepare a Statement of Energy Effects when undertaking certain agency actions if, among other criteria, the regulation is expected to see an increase in the cost of energy production or distribution in excess of one percent. The annualized cost of these requirements represents less than 0.1 percent of pipeline transportation of natural gas (North American Industry Classification System code 486210) industry revenues ($25 billion), adjusting the 2012 Economic Census value into 2017 dollars using the Gross Domestic Product Implicit Price Deflator Index. Therefore, in the aggregate it is extremely unlikely that these requirements would cause a significant increase in costs that utilities would pass on to the ratepayer.

Available information supports that, in the baseline, operators are replacing or abandoning certain pipelines regardless of the implementation of this rule as well as taking other actions such as making lines piggable.[77] As discussed above, in the final RIA, PHMSA assumed some use of pipe replacement and abandonment as a means of operators reconfirming MAOP. However, the costs of replacing infrastructure operating beyond the design useful life are not attributable to safety regulations and investment in plant, including a return on investment, are already recovered through rates.

The RIA for the final rule meets all PHMSA's requirements under applicable acts and executive orders. The analysis involves estimating a baseline scenario and changes under the regulation. PHMSA has used its judgement, available data, information, and analytical methods to develop an analysis of the baseline and incremental costs and benefits under the rule. As discussed above, some costs and benefits may be attributable to existing requirements and some may occur in the absence of the rule.

Benefits Estimates

PHMSA agrees that recent data is more reflective of recent improvements in pipeline safety and performance relative to current standards. For the final RIA, PHMSA used more recent data on pipeline incidents from 2010 to 2017 versus the 2003 to 2015 data used in the RIA for the proposed rule. PHMSA used the data from 2010 on because PHMSA updated its incident reporting methodology in 2010, and this period therefore provides the largest available sample of consistently reported incident data. Regarding the benefits analysis for the preliminary RIA developed for the NPRM potentially being skewed by one major incident (the PG&E incident at San Bruno), there is no evidence that more serious incidents are not possible in the future in the absence of the regulation, and therefore, PHMSA does not exclude this incident when qualitatively assessing benefits. At the same time, and although PHMSA developed this rule to prevent future, similar incidents, PHMSA cannot know with certainty whether a similar incident would occur again absent this rulemaking. According to the historical record, serious incidents, like the one occurring at San Bruno, occur approximately once per decade. For example, on August 19, 2000, a 30-inch-diameter natural gas transmission pipeline operated by the El Paso Natural Gas Company ruptured adjacent to the Pecos River near Carlsbad, NM. The released gas ignited and burned for 55 minutes. Twelve persons camping near the incident location were killed, and their three vehicles were destroyed.[78] Similarly, on March 23, 1994, a 36-inch-diameter natural gas transmission pipeline owned and operated by Texas Eastern Transmission Corporation ruptured in Ellison Township, NJ. The incident caused at least $25 million in damages, dozens of injuries, and the evacuation of hundreds.[79] More detailed data on current pipeline integrity in relation to populations and the environment would enable more detailed predictions of the benefits of regulations.

Due to the speculative nature of predicting the occurrence, avoidance, and character of specific future pipeline incidents, in the final RIA, PHMSA elected not to quantify the rule's benefits. PHMSA uses this approach rather than make highly uncertain predictions about both a specific number of future incidents avoided due to the final rule, and the character of avoided incidents with respect to effects on benefit-analysis endpoints (*e.g.,* fatalities, injuries, evacuation). The

[77] PG&E. 2011. ''Pacific Gas And Electric Company's Natural Gas Transmission Pipeline Replacement Or Testing Implementation Plan.'' California Public Utilities Commission; Consolidated Edison Company Of New York. 2016. ''Consolidated Edison Company Of New York, Inc. 2017–2019 Gas Operations Capital Programs/ Projects.'' New York State Department of Public Service. *http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-G-0061&submit=Search.*

[78] Natural Gas Pipeline Rupture and Fire Near Carlsbad, New Mexico, August 19, 2000, Pipeline Accident Report, NTSB/PAR–03/01, Washington, DC.

[79] Texas Eastern Transmission Corporation Natural Gas Pipeline Explosion and Fire, Pipeline Accident Report, NTSB/PAR–95–01, Washington, DC.

quantified benefits for each provision therefore represent the quantity of a given benefit category required to achieve a dollar value equal to the provision's compliance cost.

PHMSA does not have data on harmful air pollutants such as nitrous oxide, sulfur dioxide, particulate matter, formaldehyde, and lead associated with gas pipelines and compressor stations, or the reductions in these pollutants under the rule. Therefore, the analysis did not address the environmental costs associated with these pollutants. PHMSA did not include estimates of benefits based on the social cost of methane for the final rule.

Environmental Impacts

Regarding the comments stating that the preliminary EA did not adequately consider the air emissions that would result from hydrostatic pressure testing, inline inspections, excavations, and MAOP reconfirmation, PHMSA revised the EA to address this issue. Commenters asserted that by increasing the number of hydrostatic tests, pipeline replacements, and pipeline repairs required, the proposed provisions would increase methane ''blowdown'' emissions that result from the required purging of natural gas pipelines before conducting these actions. PHMSA revised the EA to include a discussion of the study conducted by M.J. Bradley & Associates (MJB&A) [80] that calculated the extent to which the proposed rule would result in blowdown emissions.

MJB&A found that unmitigated blowdown from the miles of transmission pipeline that would be required to conduct a MAOP determination would release an average of 1,353 metric tons per year of methane to the atmosphere for the 15-year compliance period [81] proposed by PHMSA. By comparison, historical unintentional releases from natural gas transmission pipelines outside of HCAs with piggable lines greater than 30 percent SMYS (a universe of facilities that could be subject to MAOP reconfirmation in MCAs) averaged 13,500 metric tons per year from 2010 to 2017. These releases were caused by 163 incidents that released an average of 663.4 metric tons per incident.[82]

Therefore, if the final rule requirements avoided two average incidents per year, the rule would not result in any net methane releases. MJB&A further stated that the potential methane emissions resultant from the NPRM would increase annual methane emissions from natural gas transmission systems by less than 0.1 percent and increase annual methane emissions from transmission system routine maintenance/upsets by less than one percent. Given these factors, PHMSA does not believe that the final rule will result in a significant, if any, increase in methane releases.

In response to comments, PHMSA revised the EA to also include a discussion of water-related impacts resulting from hydrostatic pressure testing as well as waste generation land disturbances from hydrostatic pressure testing and inline inspections. Operators must conduct all waste and wastewater disposal activities in accordance with federal, state, and local regulations and permit requirements, and the final rule requires processes and procedures in which pipeline operators are already familiar with respect to pipeline IM. Regarding the comments on the environmental impacts of pipe replacement, as discussed above, the impacts of replacing infrastructure that is operating beyond the design useful life are not attributable to the final rule requirements. While the final RIA assumes that operators will comply with MAOP reconfirmation using pipe replacement for approximately 300 miles of pipe, PHMSA did not consider these replacements to be incremental costs. Similarly, the environmental impacts are not attributable to the final rule requirements.

Other Impacts

PHMSA disagrees with the analysis of operators shifting resources away from safety programs to comply with the proposed rule. PHMSA has revised and clarified the pipeline safety and integrity applicability of the final rule such that many operators will incur lower costs than previously anticipated. The final rule also provides long compliance schedules to enable planning for efficient compliance actions.

## IV. GPAC Recommendations

This section briefly summarizes the NPRM proposals, the GPAC's major comments on the proposals discussed, and the recommendations of the committee regarding how those provisions should be finalized. More detail, the presentations, and the transcripts from all of the meetings are available in the docket for this rulemaking.[83] The provisions, which are presented in the order they were discussed at the GPAC meetings, the changes the committee agreed upon, and the corresponding vote counts are as follows:

6-Month Grace Period for 7-Calendar-Year Reassessment Intervals (§ 192.939(b))

In the NPRM, PHMSA proposed to allow operators to request a 6-month extension of the 7-calendar-year reassessment interval if the operator submits written notice to the Secretary with sufficient justification of the need for the extension in accordance with the technical correction at section 5 of the 2011 Pipeline Safety Act. The committee had no objections or substantial comments on this provision and voted 12–0 that it was, as published, technically feasible, reasonable, cost-effective, and practicable.

Safety Features on ILI Launchers and Receivers (§ 192.750)

In the NPRM, PHMSA proposed to require operators equip ILI tool launchers and receivers with a device capable of safely relieving pressure in the barrel before the insertion or removal of ILI tools, scrapers, or spheres. Further, PHMSA proposed requiring operators to use a suitable device to indicate that pressure has been relieved in the barrel or otherwise provide a means to prevent the opening of the barrel if pressure has not been relieved. The committee voted 12–0 that this provision was, as published, technically feasible, reasonable, cost-effective, and practicable, as long as PHMSA clarified that the rule language does not require ''relief valves'' or use ''relief valve'' as a term. Some committee members were concerned that using language related to ''relief valves'' would bring in other code requirements, which was not PHMSA's intent.

Seismicity (§§ 192.917, 192.935(b)(2))

In the NPRM, PHMSA proposed to include seismicity in the list of factors operators must evaluate for the threat of outside force damage when considering preventative and mitigative measures, as well as include the seismicity of an area as a pipeline attribute in an operator's data gathering and integration when performing risk analyses. The committee had no substantial comments or recommendations on this topic, and

[80] The study was commissioned by EDF and PST and is available at *http://blogs.edf.org/energyexchange/files/2016/07/PHMSA-Blowdown-Analysis-FINAL.pdf.*

[81] See § 192.624(b).

[82] ''Distribution, Transmission & Gathering, LNG, and Liquid Accident and Incident Data.'' Phmsa.Dot.Gov. 2017. *https://www.phmsa.dot.gov/data-and-statistics/pipeline/distribution-transmission-gathering-lng-and-liquid-accident-and-incident-data.*

[83] *https://www.regulations.gov/docket?D=PHMSA-2011-0023.*

they voted 12–0 that this provision was, as published, technically feasible, reasonable, cost-effective, and practicable.

Records (§§ 192.5(d), 192.13(e), 192.67, 192.127, 192.205, 192.227(c), 192.285(e), 192.619(f), 192.624(f), Appendix A)

In the NPRM, PHMSA proposed to clarify that the records required by part 192 must be documented in a reliable, traceable, verifiable, and complete manner. PHMSA summarized the recordkeeping requirements of part 192 in a new Appendix A, and required that operators must re-establish pipeline documentation whenever records were not available and make and retain records demonstrating compliance with part 192. Issues related to records were discussed through the final 4 GPAC meetings over the course of 2017 and 2018. The committee found the assorted provisions related to records as being technically feasible, reasonable, cost-effective, and practicable, if certain changes were made. Specifically, the committee recommended the word ''reliable'' be deleted from the records standard so that it reads ''traceable, verifiable, and complete'' records wherever the standard is used. Members noted that the NTSB never used the term ''reliable,'' and a PHMSA advisory bulletin reflects the language without referring to ''reliable'' records. In the class location requirements at § 192.5, the committee recommended PHMSA clarify that documentation be required to substantiate the current class location and not previous historical ones. The committee also recommended that PHMSA modify the requirements for the qualification of welders and persons joining plastic pipe to include an effective date and change the records retention provision to a period of 5 years.

During the June 2017 GPAC meeting, the committee recommended PHMSA amend provisions related to the general duty clause for records and edit the corresponding reference to retention periods in Appendix A. After further discussion, during the meeting on March 2, 2018, the committee recommended PHMSA withdraw the proposed addition of § 192.13. Similarly, in the June 2017 meeting, the committee recommended PHMSA modify the proposed Appendix A to clarify that it does not apply to distribution or gathering pipelines. After considering the issue at the meeting on March 2, 2018, the committee recommended PHMSA withdraw proposed Appendix A from the rulemaking.

Other changes the committee suggested regarding the proposed recordkeeping requirements included revising the record provisions for materials, pipe design, and components to clarify the effective date of those provisions and recommended PHMSA clarify that the recordkeeping provisions for components only applies to components greater than 2 inches in nominal diameter. The recordkeeping provisions proposed under the MAOP determination and MAOP reconfirmation sections were discussed by the GPAC separately and are expanded upon under the discussions for those specific topics below.

Following those discussions over the course of multiple meetings, the committee voted unanimously that the provisions related to recordkeeping requirements in part 192 were technically feasible, reasonable, cost-effective, and practicable, if PHMSA made the changes outlined above.

IM Clarifications (§§ 192.917(e)(2), (e)(3) & (e)(4))

In the NPRM, PHMSA proposed several changes to provisions related to how operators use data in their IM programs and manage certain types of defects. PHMSA proposed changes regarding an operator's analysis of cyclic fatigue and clarifying that certain pipe, such as low-frequency electric resistance welded pipe, must have been pressure tested for an operator to assume that any seam flaws are stable. PHMSA also proposed that any failures or changes to operation that could affect seam stability must be evaluated using a fracture mechanics analysis.

Regarding cyclic fatigue, some GPAC members expressed concern that PHMSA proposed to require an annual analysis of cyclic fatigue even if the underpinning conditions affecting cyclic fatigue had not changed. Certain GPAC members wanted to ensure that it would be a change in conditions that would trigger an evaluation and that operators would not necessarily need to do an evaluation within a certain period otherwise. During the meeting, PHMSA suggested it would consider changing cyclic fatigue analysis from annually to periodically based on any changes to cyclic fatigue data and other changes to loading conditions since the previous analysis was completed, not to exceed 7 calendar years. Further, PHMSA would consider whether there was conflict with this section and the MAOP reconfirmation requirements, which was a concern brought up during the public comment period of the meeting. Following the discussion, the committee voted 11–0, that the provisions related to cyclic fatigue were technically feasible, reasonable, cost-effective, and practicable if PHMSA revised the paragraph based on the GPAC member discussion and PHMSA's proposed language at the meeting.

For the provisions related to the stability of manufacturing- and construction-related defects, PHMSA proposed during the GPAC meeting to provide that an operator could consider manufacturing- and construction-related defects as stable only if the covered segment has been subjected to a subpart J pressure test of at least 1.25 times MAOP and the covered segment has not experienced a reportable incident attributed to a manufacturing or construction defect since the date of the most recent subpart J pressure test. Pipeline segments that have experienced a reportable incident since its most recent subpart J pressure test due to an original manufacturing-related defect, a construction-related defect, an installation-related defect, or a fabrication-related defect would be required to be prioritized as a high-risk segment for the purposes of a baseline assessment or a reassessment. PHMSA proposed to explicitly lay out these requirements in the regulations rather than cross-reference these requirements to the MAOP reconfirmation provisions. Additionally, PHMSA indicated it would create a stand-alone section to deal with pipeline cracking issues within the IM regulations and would delete a specific reference to ''pipe body cracking'' in the provisions related to electric resistance welded pipe.

Following the discussion, the committee voted 12–0 that the provisions related to IM clarifications regarding manufacturing and construction defects were technically feasible, reasonable, cost-effective, and practicable if PHMSA made the changes it proposed during the meeting, created a new, stand-alone section for addressing pipeline cracking within the IM regulations, deleted the phrase related to ''pipe body cracking,'' and considered allowing other test procedures for determining whether manufacturing- and construction-related defects were stable.

MAOP Exceedances (§§ 191.23, 191.25)

In the NPRM, PHMSA proposed requiring operators to report each exceedance of the MAOP that exceeds the build-up allowed for the operation of pressure-limiting or control devices per the congressional mandate provided in the 2011 Pipeline Safety Act, which requires operators to report such exceedances on or before the 5th day

following the date on which the exceedance occurs.

During the public comment period of the June 7, 2017, meeting, a commenter expressed concern that being required to report an exceedance within 5 days might be problematic where an ongoing investigation might preclude an operator from being able to complete a full safety-related condition report. The GPAC considered this viewpoint but noted that the 5-day reporting requirement was prescribed by statute, and PHMSA does not have discretion when implementing that deadline. The GPAC, echoing another comment from the public, discussed whether the provision would be applicable to gathering lines. PHMSA, in response, noted that the requirement would be limited to gas transmission lines only. Following the discussion, the GPAC voted 11–0 that the provision was technically feasible, reasonable, cost-effective, and practicable if PHMSA clarified that this provision does not apply to gathering lines.

Verification of Pipeline Material Properties and Attributes (§ 192.607)

In the NPRM, PHMSA proposed a process for operators to re-establish material properties on pipelines where those attributes may be unknown. The process was an opportunistic sampling approach that did not require any mandatory excavations and allowed operators to verify material properties of pipelines as opportunities presented themselves during normal operations and maintenance, such as excavations for the repair of anomalies.

The GPAC had a robust discussion on the proposed material properties verification requirements and wanted to clarify that two separate activities—MAOP reconfirmation and the application of IM principles—drive the need for material properties verification and should be addressed separately. Overall, the GPAC was supportive of PHMSA's opportunistic approach for verifying material properties. During the public comment period, members representing the pipeline industry suggested PHMSA allow a statistical sampling plan developed by operators instead of prescribing a specific number of samples needed. PHMSA clarified that it expected a 1 pipe-per-mile sampling standard in most cases.

At the December 2017 GPAC meeting, some GPAC members expressed concern with the specific attributes PHMSA was proposing operators collect and verify. There was also some discussion regarding how the notification procedure PHMSA proposed might be cumbersome if operators would be required to wait on a response or action from PHMSA every time an operator wanted to submit an alternative plan. The GPAC suggested adding language where, if PHMSA was to object to an operator notification, they would have to object within 90 days. If PHMSA did not object within 90 days, the operator would be free to go forward with the intended action.

Following the discussion, the GPAC voted 12–0 that the provisions related to material properties verification were technically feasible, reasonable, cost-effective, and practicable if the following changes were made:

- Clarify that material properties verification applies to onshore steel transmission lines only, and not distribution or gathering lines.
- Remove the applicability criteria of the section and make the material properties verification provisions a procedure that operators can use for obtaining missing or inadequate records or verifying pipeline attributes if required by the MAOP reconfirmation provisions or other code sections. The committee agreed to address the applicability of the material properties verification requirements under each of the MAOP reconfirmation methods and other sections as appropriate.
- Delete the requirements for creating a material properties verification program plan.
- Drop the list of mandatory attributes operators would be required to verify but require that operators keep any records developed through this material properties verification method.
- Retain the opportunistic approach of obtaining unknown or undocumented material properties when excavations are performed for repairs or other reasons, using a one-per-mile standard proposed by PHMSA, but allow operators to use their own statistical approach and submit a notification to PHMSA with their method. Establish a minimum standard of a 95% confidence level for operator statistical methods submitted to PHMSA.
- Retain flexibility to allow either destructive or non-destructive tests when verification is needed.
- Incorporate language stating that, if an operator does not receive an objection letter from PHMSA within 90 days of notifying PHMSA of an alternative sampling approach, the operator can proceed with their method. PHMSA will notify the operator if additional review time is needed.
- Revise the paragraph to accommodate situations where a single material properties verification test is needed (*e.g.,* additional information is needed for an anomaly evaluation/repair).
- Drop accuracy specifications (retain requirement that test methods must be validated and that calibrated equipment be used).
- Drop mandatory requirements for multiple test locations for large excavations (multiple joints within the same excavation).
- Reduce number of quadrants at which NDE tests must be made from 4 to 2.
- Delete specified program requirements for how to address sampling failures and replace with a requirement for operators to determine how to deal with sample failures through an expanded sample program that is specific to their system and circumstances. Require notification to provide expanded sample program to PHMSA, and require operators establish a minimum standard that sampling programs must be based on a minimum 95% confidence level.
- Clarify the applicability of § 192.607 (d)(3)(i).

Strengthened Assessment Requirements (Appendix F, §§ 192.493, 192.506, 192.921(a))

In the NPRM, PHMSA proposed to clarify the selection and conduct of ILI tools per updated industry standards that would be incorporated by reference, clarify the consideration of uncertainties in ILI reported results, add additional assessment methods to allow greater flexibility to operators, and allow direct assessment as a method only if the pipeline was not piggable. PHMSA also proposed to explicitly allow guided wave ultrasonic testing (GWUT) in the list of integrity assessment methods by codifying in a new Appendix F the current guidelines operators use for submitting GWUT inspection procedures.

For the updated ILI standards, some GPAC members requested PHMSA delete the ''requirements and recommendations'' language in § 192.493 and other places where standards are incorporated by reference to avoid the consequence that non-mandatory recommendations in the standards would become regulatory requirements. Following the discussion, the GPAC voted 10–0 that the provisions related to strengthened assessment requirements pertaining to in-line assessment standards were technically feasible, reasonable, cost-effective, and practicable if PHMSA struck the phrase ''the requirements and recommendations of'' from the appropriate paragraph in § 192.493.

Regarding the usage of assessment methods, certain committee members recommended PHMSA allow the direct assessment method whenever appropriate (*i.e.,* do not restrict the use of direct assessments to unpiggable pipeline segments or when other methods are impractical) and incorporate better language to clarify when it is appropriate for operators to use direct assessments. Similarly, the GPAC suggested PHMSA clarify the regulatory language so that it was clear operators must select the appropriate assessment method based on the applicable threats. The clarification would avoid the implication that operators need to run certain tools against certain threats when there is no evidence or susceptibility of that threat for that particular pipeline segment.

The GPAC also recommended that PHMSA delete the proposed requirement in the baseline assessment method that required a review of ILI results by knowledgeable individuals, since it is duplicative with other existing requirements elsewhere in the regulations. Further, some GPAC members expressed concern that all tools cannot meet the 90 percent tool tolerance that is specified in the referenced industry standard. PHMSA representatives noted that the rule would not require that every tool perform within a 90 percent specification rate, but that actual tool performance should be verified and applied when ILI data is interpreted. As in other sections of the proposed regulations, the committee also requested PHMSA adopt the same objection procedure that the GPAC discussed and approved under the material properties verification provisions for any notification under this section.

Following the discussion, the GPAC voted 10–0 that the provisions related to strengthening the conduct of a baseline integrity assessment were technically feasible, reasonable, cost-effective, and practicable if PHMSA revised the requirements to clarify that operators must select assessment methods based on the threats to which the pipeline is susceptible and removed language in the provision that is duplicative with requirements elsewhere in the regulations; clarified that direct assessment is allowed where appropriate but may not be used to assess threats for which the method is not suitable; and incorporated the same objection procedure the committee approved for the material properties verification provisions and with a PHMSA review timeframe of 90 days.

In discussing the provisions related to the ''spike'' hydrostatic pressure test method, the committee had several comments and recommendations. Specifically, some GPAC members recommended that the spike test should be performed at a pressure level of 100 percent SMYS, and not 105 percent, to account for varying elevations and test segment lengths. They also suggested that the 30-minute hold time was too long and requested PHMSA consider minimizing the duration of the spike pressure to avoid growing subcritical cracks. Further, the GPAC recommended PHMSA clarify that spike testing should be performed against the threat of ''time-dependent cracking'' and remove instances in other sections of the regulations where PHMSA listed the threats for which a spike pressure test is appropriate. Following the discussion, the committee voted 10–0 that the provisions related to the ''spike'' hydrostatic pressure test method were technically feasible, reasonable, cost-effective, and practicable if PHMSA changed the minimum spike pressure to whichever is lesser: 100 percent SMYS or 1.5 times MAOP, reduced the spike hold time to a minimum of 15 minutes after the spike pressure stabilizes, referred to ''time-dependent cracking'' in the section, incorporated the same objection procedure the committee approved for the material properties verification provisions and with a PHMSA review timeframe of 90 days, and incorporated the term ''qualified technical subject matter expert'' (SME) at the SME requirements.

The GPAC did not have major concerns with incorporating the GWUT procedures into the regulations and voted 13–0 that the provisions related to the GWUT process were technically feasible, reasonable, cost-effective, and practicable if PHMSA revised the objection procedure as recommended by GPAC members during the discussion on the proposed material properties verification requirements and considering certain minor technical recommendations made by the GPAC members.

Moderate Consequence Area Definition (§ 192.3)

In the NPRM, PHMSA proposed a new definition for ''Moderate Consequence Areas'' (MCA) which would be areas operators would have to assess per the proposed requirements for performing integrity assessments outside of HCAs. PHMSA proposed to define an MCA as an area in a ''potential impact circle'' [84] with 5 or more buildings intended for human occupancy; an ''occupied site;'' or the right-of-way of an interstate, freeway, expressway, and other principal 4-lane arterial roadway. PHMSA proposed the definition of an ''occupied site'' to be areas or buildings occupied by 5 or more persons, which was the same as an ''identified site'' under the HCA definitions at § 192.903, except that the occupancy threshold was lowered from 20 persons to 5 persons.

The GPAC, based on a comment made by a member of the public, asked if PHMSA could provide more guidance on what a ''piggable'' line is, for the purposes of this definition. The GPAC asked whether PHMSA believed that qualifier applies to pipelines that can be fully assessed by a traditional, free-swimming ILI tool without further modification to the pipeline, and PHMSA noted during the meeting that a ''piggable'' line would be one without physical or operational modifications. The GPAC then suggested PHMSA clarify that definition in the preamble of this final rule.

GPAC members representing the public were concerned about PHMSA's proposal during the meeting to eliminate the concept of an ''occupied site'' from the MCA definition. Industry members argued that, from a practicability standpoint, determining whether five people were in a location at any given time could be difficult, and there was significant overlap between ''occupied sites'' and the class locations that would need to be assessed per the proposal. The GPAC discussed whether some of these sites would be included within an operator's HCA identification program already and, if not, whether operators would be able to otherwise incorporate ''occupied sites'' into their identification and assessment programs.

Several GPAC members discussed whether PHMSA should create a database or provide other guidance on which highways should be included in the MCA definition for consistency between PHMSA, State regulators, and operators. Those comments regarding highways were made following a public comment asking whether certain elevated highways needed to be included.

Following the discussion, the GPAC voted 10–0 that the MCA definition was technically feasible, reasonable, cost-effective, and practicable if PHMSA

[84] A ''potential impact circle'' is defined under § 192.903 as ''a circle of radius equal to the potential impact radius,'' where the ''potential impact radius'' is the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property.

changed the highway description to remove the reference to ''rights-of-way'' and added language so that the highway description includes ''any portion of the paved surface, including shoulders;'' clarified that highways with 4 or more lanes are included within the definition; discussed in the preamble what the definition of ''piggable'' is; and worked with the Federal Highway Administration to provide operators with clear information and discuss it in the preamble of this final rule. Additionally, the GPAC recommended PHMSA modify the term ''occupied sites'' in the definition by removing ''5 or more persons'' and the occupancy timeframe of 50 days, and tie the requirement into the HCA survey for ''identified sites'' as discussed by members and PHMSA at the meeting. Such identification could be made through publicly available databases and class location surveys, and PHMSA was to consider the sites and enforceability per direction by the committee members.

Assessments Outside of HCAs (§ 192.710)

In the NPRM, PHMSA proposed to require operators perform integrity assessments of certain pipelines outside of HCAs. Specifically, operators would perform an initial assessment within 15 years and periodic assessments 20 years thereafter of pipelines in Class 3 and Class 4 locations as well as piggable pipelines in newly-defined ''moderate consequence areas'' as discussed above.

The GPAC, based on a public comment during the meeting, questioned whether the timeframes for the initial assessment and periodic assessments were appropriate. Members debated shortening the time frames and suggested a few timeframes that could be based on a risk-based prioritization and taking into account timeframes for HCA assessments.

Following the discussion, the GPAC voted 10–0 that the provisions related to assessments outside of HCAs were technically feasible, reasonable, cost-effective, and practicable if PHMSA clarified that direct assessment can be used as an assessment method only if appropriate for the threat being assessed but cannot be used to assess threats for which direct assessment is not suitable; revised the initial assessment and reassessment intervals from 15 years and 20 years, respectively, to 14 years and 10 years, respectively, and with a risk-based prioritization; revised the applicability requirements to apply to lines with MAOPs of 30 percent SMYS or greater; and removed the provisions related to low-stress assessments.

MAOP Reconfirmation (§ 192.624)

In the NPRM, PHMSA proposed a testing regime for (1) pipelines in HCAs, Class 3 or Class 4 locations, or ''piggable'' MCAs that experienced a reportable in-service incident due to certain types of defects since its most recent successful subpart J pressure test, (2) pipelines in HCAs or Class 3 or Class 4 locations that lacked the traceable, verifiable, and complete pressure test records necessary to substantiate the current MAOP, and (3) pipelines in HCAs, Class 3 or Class 4 locations, or piggable MCAs where the operator established the MAOP using the ''grandfather'' clause pursuant to § 192.619(c). PHMSA proposed operators of these pipelines re-confirm the MAOP of those pipelines by choosing and executing one of a variety of methods. Those methods are discussed in more detail in individual sections below.

*MAOP Reconfirmation Scope and Completion Date*

During the discussion on MAOP reconfirmation, some GPAC members suggested PHMSA revise the applicability of the provisions to remove pipeline segments with prior crack or seam incidents, as those issues would be dealt with in an operator's IM program. Certain committee members recommended PHMSA restrict the scope of the MAOP reconfirmation provisions to pipeline segments with MAOPs of 30 percent SMYS or greater. These members argued that threshold was explicit in the congressional mandate as it pertained to previously untested pipe, and that it was based on the concept that lower-stress lines leak rather than rupture. Members further suggested that the benefit in addressing low-stress lines was not commensurate with the cost of doing so. Other committee members supported retaining the scope of PHMSA's proposals in the NPRM in order to address specific NTSB recommendations.

Following the discussion, the committee voted 13–0 that the provisions related to the scope for MAOP reconfirmation were technically feasible, reasonable, cost-effective, and practicable if PHMSA removed pipelines with previous reportable incidents due to crack defects from the applicability paragraph; addressed pipeline segments with crack incident history in a new paragraph under the IM requirements; withdrew the definitions for ''modern pipe,'' ''legacy pipe,'' and ''legacy construction techniques;'' revised a reference to necessary records within the applicability paragraph to refer to records needed for MAOP determination and not subpart J pressure test records; and revised the applicability of the requirements for grandfathered lines to apply only to those lines with MAOPs of 30 percent or greater of SMYS. The committee also recommended PHMSA review the costs and benefits of making the requirements applicable to Class 3 and Class 4 non-HCA pipe operating below 30 percent SMYS.

As for the completion date for the MAOP reconfirmation requirements, the GPAC voted 13–0 that the related provisions were technically feasible, reasonable, cost-effective, and practicable if PHMSA addressed how the completion plan and completion dates required by the section would apply to pipelines that currently do not meet the applicability conditions but may in the future. The committee suggested PHMSA could add a phrase stating that operators must complete all actions required by the section on 100 percent of the applicable pipeline mileage 15 years after the effective date of the rule or, as soon as practicable but not to exceed 4 years after the pipeline segment first meets the applicability conditions, whichever date is later. The GPAC also recommended that PHMSA consider a waiver or no-objection procedure for extending that timeline past 4 years, if necessary.

*MAOP Reconfirmation: Methods 1 and 2 (Pressure Test and Pressure Reduction)*

In the NPRM, PHMSA proposed six methods an operator could use if needing to reconfirm MAOP. Method 1, a hydrostatic pressure test, would be conducted at 1.25 times MAOP or the MAOP times the class location test factor, whichever is greater. PHMSA proposed operators use a ''spike'' test method on pipeline segments with reportable in-service incidents due to known manufacturing or construction issues, and PHMSA also proposed operators estimate the remaining life of pipeline segments with crack defects. Method 2, a pressure reduction, would allow operators to reduce the pipeline segment's MAOP to the highest operating pressure divided by 1.25 times MAOP or the class location test factor times MAOP, whichever is greater. Similar to Method 1, PHMSA proposed operators taking a pressure reduction to reconfirm MAOP be required to estimate the remaining life of pipeline segments with crack defects.

The GPAC members representing the industry argued that a ''spike'' test is more appropriate to include under IM requirements and that it is not

appropriate for MAOP reconfirmation. During the meeting, PHMSA noted that if the scope of the MAOP reconfirmation provisions was to be revised to delete lines with crack-like defects, the spike test requirement would not be needed. However, PHMSA would expect the spike test provisions to be utilized when otherwise required by the regulations. GPAC members also suggested adding language to address material properties verification requirements with respect to the information that is needed to conduct a pressure test. At the meeting, PHMSA suggested that the GPAC consider explicitly requiring that any information an operator does not have to perform a successful pressure test in accordance with subpart J (or that is not documented in traceable, verifiable, and complete records) be verified in accordance with the material properties verification provisions.

Following the discussion, the GPAC voted 12–0 that the provisions related to the pressure test method for MAOP reconfirmation were technically feasible, reasonable, cost-effective, and practicable if PHMSA deleted the spike hydrostatic testing component for pipelines with suspected crack defects and referred to subpart J more broadly instead of certain sections within subpart J. The GPAC also recommended that if the pressure test segment does not have traceable, verifiable, and complete MAOP records, operators should use the best available information upon which the MAOP is currently based to perform the pressure test. The committee recommended PHMSA require operators of such pipeline segments add those segments to its plan for opportunistically verifying material properties in accordance with the material properties verification requirements, noting that most pressure tests will present at least two opportunities for material properties verification at the test manifolds.

As for the pressure reduction method of MAOP reconfirmation, the GPAC voted 12–0 that the related provisions were technically feasible, reasonable, cost-effective, and practicable if PHMSA increased the look-back period from 18 months to 5 years and removed the requirement for operators to perform fracture mechanics analysis on those pipeline segments where the pressure is being reduced to reconfirm the MAOP.

*MAOP Reconfirmation: Method 3 (Engineering Critical Assessment and Fracture Mechanics)*

In the NPRM, PHMSA proposed allowing operators to use an engineering critical assessment (ECA) analysis in conjunction with an ILI assessment to reconfirm a pipeline segment's MAOP where the segment's MAOP would be based upon the lowest predicted failure pressure (PFP) of the segment. This method would require specific technical documentation and material properties verification, and it would require operators analyze crack, metal loss, and interacting defects remaining in the pipe, or that could remain in the pipe, to determine the PFP. The pipeline segment's MAOP would then be established at the lowest PFP divided by 1.25 or by the applicable class location factor listed under the MAOP determination provisions, whichever of those derating factors is greater.

Most of the GPAC discussion on this portion of MAOP reconfirmation related to the specific values used in the fracture mechanics analysis portion of the ECA and whether those requirements would best be located in a section independent from the MAOP reconfirmation requirements. During the meetings, PHMSA noted it would consider creating a stand-alone fracture mechanics section that could be referenced when the procedure is needed or required by other sections of the regulations. PHMSA clarified that fracture mechanics would be needed in the context of MAOP reconfirmation only for the ECA method and ''other technology'' usage under Method 6 where the applicable pipeline segments have cracks or crack-like defects.

Following the discussion, the GPAC voted 12–0 that the provisions related to the ECA method of MAOP reconfirmation and fracture mechanics were technically feasible, reasonable, cost-effective, and practicable if PHMSA moved the fracture mechanics requirements to a stand-alone section in the regulations. The GPAC recommended the section not specify when, or for which pipeline segments, fracture mechanics analysis would be required, but instead provide a procedure by which operators needing to perform fracture mechanics analysis could do so.

The GPAC recommended several changes to the fracture mechanics requirements, including striking cross-references to the MAOP reconfirmation requirements and spike hydrostatic testing requirements, as well as striking the sensitivity analysis requirements and replacing them with a requirement that operators account for model inaccuracies and tolerances. Additionally, the GPAC recommended PHMSA add a paragraph specifying that any records created through the performance of a fracture mechanics analysis must be retained.

There were several technical GPAC recommendations related to the use of Charpy V-notch toughness values in the fracture mechanics analysis. Specifically, the GPAC recommended operators have the ability to use a conservative Charpy V-notch toughness value based on the sampling requirements of the material properties verification provisions, and that operators could use Charpy V-notch toughness values from similar or the same vintage pipe until the properties are obtained through an opportunistic testing program. Further, the GPAC recommended that the default Charpy V-notch toughness values (full-size specimen, based on the lowest operational temperature) of 13-ft.-lbs. (body) and 4-ft.-lbs. (seam) only apply to pipe with suspected low-toughness properties or unknown toughness properties. Additionally, the GPAC recommended PHMSA include a requirement for operators of pipeline segments with a history of leaks or failures due to cracks to work diligently to obtain toughness data if unknown and use Charpy V-notch toughness values (full-size specimen, based on the lowest operational temperature) of 5-ft.-lbs. (body) and 1-ft.-lbs. (seam) in the interim. Further, the GPAC suggested PHMSA allow operators to request the use of different default Charpy V-notch toughness values via a 90-day notification to PHMSA.

For the ECA method itself, the committee recommended PHMSA add a requirement to verify material properties in accordance with the material properties verification requirements if the information needed to conduct an ECA is not documented in traceable, verifiable, and complete records. Further, the GPAC recommended that PHMSA not include default Charpy V-notch toughness values or other technical fracture mechanics requirements in the ECA method, as those items would be specified in the new stand-alone fracture mechanics section. Similarly, the GPAC recommended removing ILI tool performance specifications and replacing them with a requirement to verify tool performance using unity plots or equivalent technologies.

*MAOP Reconfirmation: Methods 4, 5, and 6 (Pipe Replacement, Small-Diameter & Potential Impact Radius Pressure Reduction, and Other Technology)*

In the NPRM, PHMSA proposed three additional methods operators could use to reconfirm a pipeline's MAOP. Method 4, pipe replacement, would require operators to replace pipe for

which they have inadequate records or pipe that was not previously tested due to the grandfather clause in § 192.619(c). Method 5, as proposed, was applicable to low-stress, small diameter, and small potential impact radius (PIR) lines,[85] and would require operators to take a 10 percent pressure cut as well as perform more frequent patrols and leak surveys. Method 6, ''other technology,'' would allow operators to use an alternative method, with notification to PHMSA, to reconfirm the MAOP of their applicable pipeline segments.

The GPAC had no major comments regarding Method 4, pipe replacement. For Method 5, GPAC members representing the industry questioned the need for the compensatory safety measures, such as the additional patrols and leak surveys, in conjunction with the 10 percent pressure reduction. They also supported public comments that promoted expanding the applicability of Method 5 beyond the prescribed pipe diameter of less than or equal to 8 inches and the operating pressure of below 30 percent SMYS. During the meeting, PHMSA noted it could drop the diameter and operating pressure requirements from the applicability and use the prescribed PIR of 150 feet or less as a proxy for those risk factors. Additionally, PHMSA noted it would expand the look-back period to 5 years to be consistent with committee and public comments regarding the pressure reduction method (Method 2) of MAOP reconfirmation discussed earlier. With regard to the ''other technology'' method, committee members suggested using the notification procedure developed for the material properties verification requirements, and PHMSA acknowledged it could be included here as well.

Following the discussion, the committee voted 11–0 that the provisions related to the pipe replacement, pressure reduction for small PIR and diameter lines, and ''other technology'' methods of MAOP reconfirmation were technically feasible, reasonable, cost-effective, and practicable if PHMSA made certain changes. For Method 4, pipe replacement, the committee had no significant comments or changes. For Method 5, the small PIR and diameter pressure reduction method, the GPAC recommended PHMSA delete the size and pressure criteria, limiting the requirement to those lines with a PIR of 150 feet or less; remove the external corrosion direct assessment, crack analysis program, odorization, and fracture mechanics analysis requirements; and change the frequency of patrols and surveys to 4 times per year in Class 1 and Class 2 locations and 6 times per year in Class 3 and Class 4 locations. For Method 6, the ''other technology'' method, the GPAC recommended PHMSA incorporate the same 90-day notification and objection procedure the GPAC approved for the material properties verification requirements.

*MAOP Reconfirmation: Recordkeeping and Notification*

The GPAC also voted on the notification procedure and recordkeeping requirements of the MAOP reconfirmation requirements. As there were no substantial GPAC comments on these issues, the GPAC voted 11–0 that the provisions are technically feasible, reasonable, cost-effective, and practicable if PHMSA provided guidance regarding what ''traceable, verifiable, and complete'' records are in the preamble, and if the notification procedure is retained as it was proposed in the NPRM, but incorporating the same 90-day notification and objection procedure the committee approved for the material properties verification requirements into any notification required under the MAOP reconfirmation requirements.

Other MAOP Amendments (§§ 192.503, 192.605(b)(5), 192.619(a)(2), 192.619(a)(4), 192.619(e), 192.619(f))

PHMSA presented to the committee issues related to other portions of MAOP determination[86] that had cross-references to MAOP reconfirmation methods or other areas of the proposed regulations. More specifically, the GPAC was to consider recommending PHMSA eliminate duplications in scope between the MAOP determination provisions and the MAOP reconfirmation provisions, and eliminate a duplicative revision to the subpart J pressure test general requirements that was referenced adequately elsewhere in the proposal. PHMSA also proposed that the establishment of MAOP under § 192.619 should rely on traceable, verifiable, and complete records, and therefore cross-referenced the material properties verification provisions with the MAOP determination provisions. Similarly, PHMSA added a paragraph to the existing MAOP determination provisions to more clearly specify that operators must have records to substantiate the MAOP of their pipeline segments. To address an NTSB recommendation from the PG&E incident, PHMSA also proposed requiring that the MAOP pressure limitation factor specified in the MAOP determination section of the regulations for Class 1 pipeline segments be based on the subpart J test pressure divided by 1.25, whereas the existing requirement was the test pressure divided by 1.1. Finally, PHMSA proposed adding a clarification that the requirement for overpressure protection applied to pipeline segments where the MAOP was established using one of the six methods under MAOP reconfirmation. However, PHMSA noted in response to public comment that the clarification seemed to be overly confusing and should be withdrawn.

The GPAC reviewed and discussed PHMSA's proposed changes to the other MAOP-related provisions, voting 12–0 that the provisions are technically feasible, reasonable, cost-effective, and practicable if PHMSA considered editorially restructuring the applicability of the MAOP determination provisions; clarifying that the recordkeeping requirements specified under MAOP determination only apply to onshore, steel, gas transmission pipelines; and clarifying that the MAOP recordkeeping requirements are not retroactive. The GPAC suggested this be clarified by stating existing records for pipelines installed on or before the effective date of the rule must be kept for the life of the pipeline, that pipelines installed after the effective date of the rule must make and retain records as required for the life of the pipeline, and that MAOP records are required for any pipeline placed in service after the effective date of the rule. The GPAC noted that other sections, including the MAOP reconfirmation and material properties verification requirements, would require when and for which pipeline segments where MAOP records are not documented in a traceable, verifiable, and complete manner would need to be verified.

Changes From the GPAC Recommendations

In this final rule, PHMSA considered the recommendations of the GPAC and adopted them as PHMSA deemed appropriate. However, there were recommendations from the GPAC that PHMSA considered but did not adopt. To summarize, the major changes PHMSA made in this rule that deviate from the GPAC recommendations are as follows:

(1) When discussing the other proposed issues related to the MAOP requirements, the GPAC recommended

[85] These lines would be lines operating below 30 percent SMYS with diameters of 8 inches or less and PIRs of 150 feet or less.

[86] See § 192.619.

PHMSA consider moving § 192.619(e) to be a subsection of § 192.619(a) and consider referencing section § 192.624 in § 192.619(a). PHMSA did not implement this recommendation because MAOP reconfirmation for grandfathered segments is not applicable for new pipeline segments.

(2) When considering the IM clarifications at § 192.917, the GPAC recommended PHMSA consider removing the term ''hydrostatic'' from the testing requirements at § 192.917(e)(3), which deals with manufacturing and construction defects, and allow other authorized testing procedures. PHMSA is not implementing this recommendation because allowing pneumatic tests would be a safety concern to the public and operating personnel.

(3) When discussing the assessment requirements for non-HCAs under proposed § 192.710, the GPAC recommended PHMSA change the ''discovery of condition'' period allotted from 180 to 240 days. PHMSA is not implementing this suggestion from the GPAC and is retaining the 180-day timeframe for operators to determine whether a condition presents a potential threat to the integrity of the pipeline.

(4) PHMSA added a notification requirement for the use of other technology under the non-HCA assessment requirements at § 192.710. While the GPAC did not specifically request PHMSA make this change, the GPAC was generally supportive of incorporating the notification procedure the committee agreed to under the proposed material properties verification requirements for other applications.

(5) Regarding the requirements for the scope of MAOP reconfirmation, the GPAC recommended PHMSA review the costs and benefits of including Class 3 and Class 4 pipelines not located in HCAs and that operate at less than 30 percent SMYS. PHMSA did consider this as an alternative in the RIA but chose not to move forward with the proposal as suggested as it is outside the scope of the mandate.

(6) Regarding the MCA definition, the GPAC recommended PHMSA consider modifying the term ''occupied sites'' within the definition by removing reference to ''5 or more persons'' and the timeframe of 50 days and tying the requirement for identifying occupied sites to the HCA ''identified sites'' survey requirement as discussed by members and PHMSA at the meeting. In this final rule, PHMSA chose to delete the term ''occupied sites'' from the MCA definition and from the general definitions section of part 192.

(7) PHMSA moved the specific ECA requirements outside of the MAOP reconfirmation section into a new stand-alone § 192.632. The MAOP reconfirmation requirements regarding the ECA method at § 192.624(c)(3) and the ECA requirements in § 192.632 will cross-reference each other. PHMSA made this change to streamline the MAOP reconfirmation provisions and improve the readability of the requirements. No substantive changes were made to the procedure in connection with this reorganization; this was a stylistic change only.

## V. Section-by-Section Analysis

### *§ 191.23 Reporting Safety-Related Conditions*

Section 23 of the 2011 Pipeline Safety Act requires operators to report each exceedance of MAOP that exceeds the margin (build-up) allowed for operation of pressure-limiting or control devices. On December 21, 2012, PHMSA published advisory bulletin ADB–2012–11, which advised operators of their responsibility under section 23 of the 2011 Pipeline Safety Act to report such exceedances. PHMSA is revising § 191.23 to codify this statutory requirement.

### *§ 191.25 Filing Safety-Related Condition Reports*

Section 23 of the 2011 Pipeline Safety Act requires operators to report each exceedance of the MAOP that exceeds the margin (build-up) allowed for operation of pressure-limiting or control devices. As described above, PHMSA is revising § 191.23 to codify this requirement. Section 191.25 is also revised to make conforming edits and comply with the mandatory 5-day reporting deadline specified in section 23 of the 2011 Pipeline Safety Act.

### *§ 192.3 Definitions*

Section 192.3 provides definitions for various terms used throughout part 192. In support of other regulations adopted in this final rule, PHMSA is amending the proposed definition of ''*Moderate consequence area.*'' This change will define this term as it is used throughout part 192.

The definition of a ''*moderate consequence area,*'' or MCA, is based on similar methodology used to define ''*high consequence area,*'' or HCA in § 192.903. Moderate consequence areas will define the subset of non-HCA locations where integrity assessments are required (§ 192.710) and where MAOP reconfirmation is required (§ 192.624). The criteria for determining MCA locations differs from the criteria currently used to identify HCAs in that the threshold for buildings intended for human occupancy located within the potential impact radius is lowered from 20 to 5, and identified sites are excluded. In response to NTSB recommendation P–14–01, which was issued as a result of the incident near Sissonville, WV, the MCA definition also includes locations where interstate highways, freeways, expressways, and other principal 4-or-more-lane arterial roadways are located within the potential impact radius.

PHMSA is also adopting a definition of an ''*engineering critical assessment,*'' as that term will be used in §§ 192.624 and 192.632. More specifically, the ECA is a documented analytical procedure that operators can use to determine the maximum tolerable size for pipeline imperfections based on the MAOP of the particular pipeline segment. Operators can use an ECA in conjunction with an ILI inspection as one of the methods to reconfirm MAOP, if required.

### *§ 192.5 Class Locations*

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require verification of records used to establish MAOP to ensure they accurately reflect the physical and operational characteristics of certain pipelines and to confirm the established MAOP of the pipelines. PHMSA has determined that an important aspect of compliance with this requirement is to assure that pipeline class location records are complete and accurate. This final rule adds a new paragraph, § 192.5(d), to require each operator of transmission pipelines to maintain records documenting the current class location of each pipeline segment and demonstrating how an operator determined each current class location in accordance with this section.

### *§ 192.7 What documents are incorporated by reference partly or wholly in this part?*

Section 192.7 lists documents that are incorporated by reference in part 192. PHMSA is making conforming amendments to § 192.7 in the rule text to reflect other changes adopted in this final rule.

### *§ 192.9 What requirements apply to gathering lines?*

This final rule codifies new standards for gas transmission pipelines, most of which are not intended to be applied to gas gathering pipelines. PHMSA is making conforming amendments to § 192.9 to clarify which provisions

apply only to gas transmission pipelines and not to gas gathering pipelines.

*§ 192.18 How To Notify PHMSA*

This final rule allows operators to notify PHMSA of proposed alternative approaches to achieving the objective of the minimum safety standards in several different regulatory sections. These notification procedures for alternative actions are comparable to the existing notification requirements in subpart O for the integrity management regulations. Because PHMSA is expanding the use of notifications to pipeline segments for which subpart O does not apply (*i.e.,* to non-HCA pipeline segments), PHMSA is adding a new § 192.18 in subpart A that contains the procedure for submitting such notifications for any pipeline segment.

*§ 192.67 Records: Material Properties*

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require the verification of records to ensure they accurately reflect the physical and operational characteristics of certain pipelines and to confirm the established MAOP of the pipelines. PHMSA has determined that compliance requires that pipeline material properties records are complete and accurate. This final rule moves the original § 192.67 to § 192.69 and adds in its place a new § 192.67 that requires each operator of gas transmission pipelines installed after the effective date of this final rule to collect or make, and retain for the life of the pipeline, records that document the physical characteristics of the pipeline, including tests, inspections, and attributes required by the manufacturing specification in effect at the time the pipe was manufactured. The physical characteristics an operator must keep documented include diameter, yield strength, ultimate tensile strength, wall thickness, seam type, and chemical composition. These requirements also apply to any new materials or components that are put on existing pipelines. For pipelines installed prior to the effective date of this final rule, operators are required to retain for the life of the pipeline all such records in their possession as of the effective date of this final rule. These recordkeeping requirements apply to offshore gathering lines and Type A gathering lines in accordance with § 192.9.

Pipelines that lack the traceable, verifiable, and complete records needed to substantiate MAOP may be subject to the MAOP reconfirmation requirements at § 192.624, as specified in that section.

*§ 192.69 Storage and Handling of Plastic Pipe and Associated Components*

Previous § 192.67, titled ''Storage and handling of plastic pipe and associated components,'' was created as a part of the Plastic Pipe rule, which was published on November 20, 2018 (83 FR 58716). PHMSA is redesignating that section in this final rule to a new § 192.69. No other changes have been made to the section.

*§ 192.127 Records: Pipe Design*

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require the verification of records to ensure they accurately reflect the physical and operational characteristics of certain pipelines and to confirm the established MAOP of the pipelines. PHMSA has determined that compliance requires that pipe design records are complete and accurate. For pipelines installed after the effective date of this final rule, this final rule adds a new § 192.127 to require each operator of gas transmission pipelines to collect or make, and retain for the life of the pipeline, records documenting pipe design to withstand anticipated external pressures and determination of design pressure for steel pipe. For pipelines installed prior to the effective date of this final rule, operators are required to retain for the life of the pipeline all such records in their possession as of the effective date of this final rule. Pipelines that lack the traceable, verifiable, and complete records needed to substantiate MAOP may be subject to the MAOP reconfirmation requirements at § 192.624, as specified in that section.

*§ 192.150 Passage of Internal Inspection Devices*

The current pipeline safety regulations in § 192.150 require that pipelines be designed and constructed to accommodate in-line inspection devices. Prior to this rulemaking, part 192 was silent on technical standards or guidelines for implementing requirements to assure pipelines are designed and constructed for in-line inspection assessments. Previously, there was no consensus industry standard that addressed design and construction requirements for in-line inspection assessments. NACE Standard Practice, NACE SP0102–2010, ''In-line Inspection of Pipelines,'' has since been published and provides guidance on this issue in section 7. The incorporation of this standard into the Federal Pipeline Safety Regulations at § 192.150 will promote a higher level of safety by establishing consistent standards for the design and construction of pipelines to accommodate in-line inspection devices.

*§ 192.205 Records: Pipeline Components*

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require the verification of records to ensure they accurately reflect the physical and operational characteristics of certain pipelines and to confirm the established MAOP of the pipelines. PHMSA has determined that compliance requires that pipeline component records are complete and accurate. For pipelines installed after the effective date of this final rule, this final rule adds a new § 192.205 to require each operator of gas transmission pipelines to collect or make, and retain for the operational life of the component, records documenting manufacturing and testing information for valves and other pipeline components. For pipelines installed prior to the effective date of this final rule, operators are required to retain for the life of the pipeline all such records in their possession as of the effective date of this final rule. Pipelines that lack the traceable, verifiable, and complete records needed to substantiate MAOP may be subject to the MAOP reconfirmation requirements at § 192.624, as specified in that section.

*§ 192.227 Qualification of Welders*

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require the verification of records to ensure they accurately reflect the physical and operational characteristics of certain pipelines and to confirm the established MAOP of the pipelines. PHMSA has determined that compliance requires that pipeline welding qualification records are complete and accurate. This final rule adds a new paragraph, § 192.227(c), to require each operator of gas transmission pipelines to make and retain records demonstrating each individual welder's qualification in accordance with this section for a minimum of 5 years following construction. This requirement will apply to pipelines installed after one year from the effective date of the rule.

*§ 192.285 Plastic Pipe: Qualifying Persons To Make Joints*

Section 23 of the 2011 Pipeline Safety Act requires the Secretary of Transportation to require the verification of records to ensure they accurately reflect the physical and

operational characteristics of certain pipelines and to confirm the established MAOP of the pipelines. PHMSA has determined that compliance requires that plastic pipeline qualification records are complete and accurate. This final rule adds a new paragraph, § 192.285(e), to require each operator of gas transmission pipelines to make and retain records demonstrating a person's plastic pipe joining qualifications in accordance with this section for a minimum of 5 years following construction. This requirement will apply to pipelines installed after one year from the effective date of the rule.

*§ 192.493 In-Line Inspection of Pipelines*

The current pipeline safety regulations at §§ 192.921 and 192.937 require that operators assess the material condition of pipelines in certain circumstances (*e.g.,* IM assessments for pipelines in HCAs) and allow the use of ILI tools for these assessments. Operators of gas transmission pipelines are required to follow the requirements of ASME/ANSI B31.8S, ''Managing System Integrity of Gas Pipelines,'' in conducting their IM activities. ASME B31.8S provides limited guidance for conducting ILI assessments. Presently, part 192 is silent on the technical standards or guidelines for performing ILI assessments or implementing these requirements. When the IM regulations were initially promulgated, there were no uniform industry standards for ILI assessments. Three related standards have since been published:

- API STD 1163–2013, ''In-Line Inspection Systems Qualification Standard.'' This Standard serves as an umbrella document to be used with and as a complement to the NACE and ASNT standards below, which are incorporated by reference in API STD 1163.
- NACE Standard Practice, NACE SP0102–2010, ''In-line Inspection of Pipelines.''
- ANSI/ASNT ILI–PQ–2005 (2010), ''In-line Inspection Personnel Qualification and Certification.''

API 1163–2013 is more comprehensive and rigorous than the current requirements in 49 CFR part 192. The incorporation of this standard into the Federal Pipeline Safety Regulations will promote a higher level of safety by establishing consistent standards to qualify the equipment, people, processes, and software utilized by the ILI industry. The API standard addresses in detail each of the following aspects of ILI inspections, most of which are not currently addressed in the regulations:

- Systems qualification process.
- Personnel qualification.
- ILI system selection.
- Qualification of performance specifications.
- System operational validation.
- System results qualification.
- Reporting requirements.
- Quality management system.

The NACE standard covers in detail each of the following aspects of ILI assessments, most of which are not currently addressed in part 192 or in ASME B31.8S:

- Tool selection.
- Evaluation of pipeline compatibility with ILI.
- Logistical guidelines, which includes survey acceptance criteria and reporting.
- Scheduling.
- New construction (planning for future ILI in new lines).
- Data analysis.
- Data management.

The NACE standard provides a standardized questionnaire and specifies that the completed questionnaire should be provided to the ILI vendor. The questionnaire lists relevant parameters and characteristics of the pipeline section to be inspected. PHMSA determined that the consistency, accuracy, and quality of pipeline in-line inspections would be improved by incorporating the consensus NACE standard into the regulations.

The NACE standard applies to ''free swimming'' inspection tools that are carried down the pipeline by the transported product. It does not apply to tethered or remotely controlled ILI tools, which can also be used in special circumstances (*e.g.,* examination of laterals). While their use is less prevalent than free-swimming tools, some pipeline IM assessments have been conducted using tethered or remotely controlled ILI tools. PHMSA determined that many of the provisions in the NACE standard can be applied to tethered or remotely controlled ILI tools. Therefore, PHMSA is amending the Federal Pipeline Safety Regulations to allow the use of these tools, provided they comply with the applicable sections of the NACE standard.

The ANSI/ASNT standard provides for qualification and certification requirements that are not addressed by 49 CFR part 192. The incorporation of this standard into the regulations will promote a higher level of safety by establishing consistent standards to qualify the equipment, people, processes and software utilized by the ILI industry. The ANSI/ASNT standard addresses in detail each of the following aspects, which are not currently addressed in the regulations:

- Requirements for written procedures.
- Personnel qualification levels.
- Education, training and experience requirements.
- Training programs.
- Examinations (testing of personnel).
- Personnel certification and recertification.
- Personnel technical performance evaluations.

The final rule adds a new § 192.493 to require compliance with the three consensus standards discussed above when conducting ILI of pipelines.

*§ 192.506 Transmission Lines: Spike Hydrostatic Pressure Test*

A pressure test that incorporates a short duration ''spike'' pressure is a proven means to confirm the strength of pipe with known or suspected threats of cracks or crack-like defects (*e.g.,* stress corrosion cracking, longitudinal seam defects, etc.). Currently, part 192 does not include minimum standards for such a spike hydrostatic pressure test. This final rule adds a new § 192.506 to codify the minimum standards for performing spike hydrostatic pressure tests when operators are required to, or elect to, use this assessment method. Under the spike hydrostatic pressure test requirements, an operator may use other technologies or processes equivalent to a spike hydrostatic pressure test with justification and notification in accordance with § 192.18.

*§ 192.517 Records: Tests*

Section 192.517 prescribes the recordkeeping requirements for each test performed under §§ 192.505 and 192.507. PHMSA is making conforming amendments to § 192.517 to add the recordkeeping requirements for the new § 192.506.

*§ 192.607 Verification of Pipeline Material Properties and Attributes: Onshore Steel Transmission Pipelines*

Section 23 of the 2011 Pipeline Safety Act mandates the Secretary of Transportation to require operators of gas transmission pipelines in Class 3 and Class 4 locations and Class 1 and Class 2 locations in HCAs to verify records to ensure the records accurately reflect the physical and operational characteristics of the pipelines and confirm the MAOP of the pipelines established by the operator (49 U.S.C. 60139). PHMSA issued Advisory Bulletin 11–01 on January 10, 2011 (76

FR 1504), and Advisory Bulletin 12–06 on May 7, 2012 (77 FR 26822), to inform operators of this requirement. Operators have submitted information in their Annual Reports (starting for calendar year 2012) indicating that a portion of transmission pipeline segments do not have adequate records to establish MAOP and that some operators do not have traceable, verifiable, and complete records that accurately reflect the physical and operational characteristics of the pipeline. Therefore, PHMSA has determined that additional regulations are needed to implement the 2011 Pipeline Safety Act. This final rule promulgates specific criteria for determining which pipeline segments must undergo examinations and tests to understand and document physical and material properties and reconfirm a proper MAOP. For operators that do not have traceable, verifiable, and complete documentation for the physical pipeline characteristics and attributes of a pipeline segment, PHMSA is adding a new § 192.607 that contains the procedure for verifying and documenting pipeline physical properties and attributes that are not documented in traceable, verifiable, and complete records and to establish standards for performing these actions. For operators of certain pipelines lacking the necessary records to substantiate MAOP, PHMSA is also adding § 192.624, which provides operators several methods for reconfirming a pipeline segment's MAOP.

The new material properties verification requirements at § 192.607 include the scope of information needed and the methodology for verifying material properties and attributes of pipelines. The most difficult information to obtain, from a technical perspective, is the strength of the pipeline's steel. Conventional techniques to obtain that data would include cutting out a piece of pipe and destructively testing it to determine the yield and ultimate tensile strength. In this final rule, PHMSA is providing operators with flexibility by allowing the use of non-destructive techniques that have been validated to produce accurate results for the grade and type of pipe being evaluated (see § 192.624).

Another issue regarding material properties verification is the cost associated with excavating the pipeline to verify material properties and determining how much pipeline needs to be exposed and tested to have assurance of the accuracy of the verification. PHMSA addresses these issues within this final rule by specifying that operators can take advantage of opportunities when the pipeline is already being exposed, such as when maintenance activity is occurring and when anomaly repairs are being made, to verify material properties that are not documented in traceable, verifiable, and complete records. For example, PHMSA considers excavations associated with the direct examination of anomalies, pipeline relocations at road crossings and river or stream crossings, pipe upgrades for class location changes, pipe cut-outs for hydrostatic pressure tests, and excavations where pipe is replaced due to anomalies to be opportunities to perform material properties verification. Over time, pipeline operators will develop a substantial set of traceable, verifiable, and complete material properties data, which will provide assurance that material properties are reliably known for the population of segments that did not have pipeline physical properties and attributes documented in traceable, verifiable, and complete records previously. Through this final rule, PHMSA is requiring that operators continue this opportunistic material properties verification process until the operator has completed enough verifications to obtain a high level of confidence that only a small percentage of pipeline segments have physical pipeline characteristics and attributes that are not verified or are otherwise inconsistent with all available information or operators' past assumptions. This final rule specifies the number of excavations required for operators to achieve this level of confidence.

Operators may use an alternative sampling approach that differs from the sampling approach specified in the requirements if they notify PHMSA in advance of using an alternative sampling approach in accordance with § 192.18.

Requirements are also included in the material properties verification section to ensure that operators document the results of the material properties verification process in records that must be retained for the life of the pipeline.

*§ 192.619 Maximum Allowable Operating Pressure: Steel or Plastic Pipelines*

The NTSB report on the PG&E incident included a recommendation (P–11–15) that PHMSA amend its regulations so that manufacturing-and construction-related defects can only be considered ''stable'' if a gas pipeline has been subjected to a post-construction hydrostatic pressure test of at least 1.25 times the MAOP. This final rule revises the test pressure factors in § 192.619(a)(2)(ii) to correspond to at least 1.25 times MAOP for pipelines installed after the effective date of this rule.

The NTSB also recommended repealing § 192.619(c), commonly referred to as the ''grandfather clause,'' and requiring that all gas transmission pipelines constructed before 1970 be subjected to a hydrostatic pressure test that incorporates a spike test (recommendation P–11–14). Similarly, section 23 of the 2011 Pipeline Safety Act requires that selected pipeline segments in certain locations with previously untested pipe (*i.e.,* the MAOP is established under § 192.619(c)) or without MAOP records be tested with a pressure test or equivalent means to reconfirm the pipeline's MAOP. These requirements are addressed in the new § 192.624 and are described in more detail in the following section. This final rule also makes conforming changes to § 192.619 to require that operators of pipeline segments to which § 192.624 applies establish and document the segment's MAOP in accordance with § 192.624.

*§ 192.624 Maximum Allowable Operating Pressure Reconfirmation: Onshore Steel Transmission Pipelines*

Section 23 of the 2011 Pipeline Safety Act requires the verification of records for pipe in Class 3 and Class 4 locations, and high-consequence areas in Class 1 and Class 2 locations, to ensure they accurately reflect the physical and operational characteristics of the pipelines and confirm the established MAOP of the pipelines. Operators have submitted information in annual reports (beginning in calendar year 2012) indicating that some gas transmission pipeline segments do not have adequate material properties records or testing records to confirm physical and operational characteristics and to establish MAOP. For these pipelines, the 2011 Pipeline Safety Act requires that PHMSA promulgate regulations to require operators to reconfirm MAOP as expeditiously as economically feasible. The statute also requires PHMSA to issue regulations that require previously untested pipeline segments located in HCAs and operating at greater than 30 percent SMYS be tested to confirm the material strength of the pipelines. Such tests must be performed by pressure testing or other methods determined by the Secretary to be of equal or greater effectiveness.

As a result of its investigation of the PG&E incident, the NTSB issued two related recommendations. NTSB recommended that PHMSA repeal § 192.619(c), commonly referred to as

the ''grandfather clause,'' and require that all gas transmission pipelines constructed before 1970 be subjected to a hydrostatic pressure test that incorporates a spike test (P–11–14). The NTSB also recommended that PHMSA amend the Federal Pipeline Safety Regulations so that manufacturing- and construction-related defects can only be considered stable if a pipeline has been subjected to a post-construction hydrostatic pressure test of at least 1.25 times the MAOP (P–11–15).

Through this final rule, PHMSA is finalizing a new § 192.624 to address these mandates and recommendations. This final rule requires that operators reconfirm and document MAOP for certain onshore steel gas transmission pipelines located in HCAs or MCAs that meet one or more of the criteria specified in § 192.624(a). More specifically, this section applies to (1) pipelines in HCAs or Class 3 or Class 4 locations lacking traceable, verifiable, and complete records necessary to establish the MAOP (per § 192.619(a)) for the pipeline segment, including, but not limited to, hydrostatic pressure test records required by § 192.517(a); and (2) pipelines where the MAOP was established in accordance with § 192.619(c), the pipeline segment's MAOP is greater than or equal to 30 percent of SMYS, and the pipeline is located in an HCA, a Class 3 or Class 4 location, or an MCA that can accommodate inspection by means of instrumented inline inspection tools (*i.e.,* ''smart pigs''). This approach implements the mandate in the 2011 Pipeline Safety Act for pipeline segments in HCAs and Class 3 and Class 4 locations (49 U.S.C. 60139). In addition, the scope includes pipeline segments in the newly defined MCAs. This approach is intended to address the NTSB recommendations and to provide increased safety in areas where a pipeline rupture would have a significant impact on the public or the environment. Though PHMSA is subjecting certain grandfathered pipeline segments to the MAOP reconfirmation requirements of § 192.624, PHMSA is not repealing § 192.619(c) for pipeline segments located outside of HCAs, Class 3 or Class 4 locations, or MCAs that can accommodate inspection by means of instrumented ILI tools. Previously grandfathered pipelines that reconfirm MAOP using one of the methods of § 192.624 that operate above 72 percent SMYS may continue to operate at the reconfirmed pressure.

The methods to reconfirm MAOP are specified in § 192.624 and are as follows:

Method 1—Pressure test. The pressure test method as specified in section 23 of the 2011 Pipeline Safety Act. Operators choosing to pressure test must also verify material property records in accordance with § 192.607. PHMSA notes that a pressure test requires the cutout of pipe at test manifold sites and those pipe cutouts would be a prime example of pipe that could and should be tested through the material properties verification procedure, if necessary. In accordance with the statute, PHMSA determined that the following methods (2) through (6) are equally effective as a pressure test for the purposes of reconfirming MAOP.

Method 2—Pressure reduction. De-rating the pipeline segment so that the new MAOP is less than the historical actual sustained operating pressure by using a pressure test safety factor of 0.80 (for Class 1 and Class 2 locations) or 0.67 (for Class 3 and Class 4 locations) times the sustained operating pressure (equivalent to a pressure test using gas or water as the test medium with a test pressure of 1.25 times MAOP for Class 1 and Class 2 locations and 1.5 times MAOP for Class 3 and Class 4 locations).

Method 3—Engineering critical assessment. An in-line inspection, previously performed pressure test, or alternative technology and engineering critical assessment process using technical analysis with acceptance criteria to establish a safety margin equivalent to that provided by a new pressure test. PHMSA organized the ECA process requirements under a new § 192.632 and established the technical requirements for analyzing the predicted failure pressure as a part of the ECA analysis in a new § 192.712. If an operator chooses the ECA method for MAOP reconfirmation but does not have any of the material properties necessary to perform an ECA analysis (diameter, wall thickness, seam type, grade, and Charpy V-notch toughness values, if applicable), the operator must include the pipeline segment in its program to verify the undocumented information in accordance with the material properties verification requirements at § 192.607.

Method 4—Pipe replacement. Replacement of the pipe, which would require a new pressure test that conforms with subpart J before the pipe is placed into service.

Method 5—Pressure reduction for pipeline segments with small potential impact radii. For pipeline segments with a potential impact radius of less than or equal to 150 feet, a pressure reduction using a safety factor of 0.90 times the sustained operating pressure is allowed (equivalent to a pressure test of 1.11 times MAOP), supplemented with additional preventive and mitigative measures specified in this final rule.

Method 6—Alternative technology. Other technology that the operator demonstrates provides an equivalent or greater level of safety, provided PHMSA is notified in advance in accordance with § 192.18.

Lastly, this final rule includes a new paragraph, § 192.624(f), to clearly specify that records created while reconfirming MAOP must be retained for the life of the pipeline.

*§ 192.632 Engineering Critical Assessment for Maximum Allowable Operating Pressure Reconfirmation: Onshore Steel Transmission Pipelines*

The requirements for reconfirming MAOP in the new § 192.624 include an option for operators to perform an engineering critical assessment, or ECA, to reconfirm MAOP in lieu of pressure testing and the other methods provided. The requirements for conducting such an ECA were proposed under the MAOP reconfirmation requirements at § 192.624(c)(3); however, PHMSA has moved the ECA requirements to a new, stand-alone section and cross-referenced those requirements in order to improve the readability of the MAOP reconfirmation requirements.

Operators choosing the ECA method for MAOP reconfirmation may perform an in-line inspection and a technical analysis with acceptance criteria to establish a safety margin equivalent to that provided by a pressure test. PHMSA established the technical requirements for analyzing the predicted failure pressure as a part of the ECA analysis in a new § 192.712, and those requirements are cross-referenced within this ECA process.

Although PHMSA expects that most operators will use an ECA in conjunction with in-line inspection, PHMSA would also allow operators with past, valid pressure tests to calculate the largest defects that could have survived the pressure test and analyze the postulated defects to calculate a predicted failure pressure with which to establish MAOP. This approach might be desirable for operators in certain circumstances, such as for line segments that have valid pressure test records, but that lack other records (such as material strength or pipe wall thickness) necessary to determine design pressure and establish MAOP under the existing § 192.619(a). Another situation for which operators could use this approach would be if the operator has a valid pressure test, but it was not conducted at a test pressure that

was high enough to establish the current MAOP.

Operators with pressure test records meeting the subpart J test requirements may use an ECA by calculating the largest defect that could have survived the pressure test and estimating the flaw growth between the date of the test and the date of the ECA. The ECA is then performed using these postulated defect sizes. In addition, operators must calculate the remaining life of the most severe defects that could have survived the pressure test and establish an appropriate re-assessment interval in accordance with new § 192.712.

If an operator chooses to use ILI to characterize the defects remaining in the pipe segment and the ECA method for MAOP reconfirmation but does not have one or more of the material properties necessary to perform an ECA analysis (diameter, wall thickness, seam type, grade, and Charpy V-notch toughness values, if applicable), the operator must use conservative assumptions and include the pipeline segment in its program to verify the undocumented information in accordance with the material properties verification requirements at § 192.607.

*§ 192.710 Transmission Lines: Assessments Outside of High Consequence Areas*

Section 5 of the 2011 Pipeline Safety Act requires, if appropriate, the Secretary of Transportation to issue regulations expanding IM system requirements, or elements thereof, beyond HCAs. Currently, part 192 does not contain any requirement for operators to conduct integrity assessments of onshore transmission pipelines that are not HCA segments, as defined in § 192.903, and are therefore not subject to subpart O. However, only approximately 7 percent of onshore gas transmission pipelines are located in HCAs. Through this final rule, operators are required to periodically assess Class 3 locations, Class 4 locations, and MCAs that can accommodate inspection by means of an instrumented inline inspection tool. The periodic assessment requirements under this section apply to pipelines in these locations with MAOPs greater than or equal to 30 percent of SMYS.

Industry has, as a practical matter, assessed portions of pipelines in non-HCA segments coincident with integrity assessments of HCA pipeline segments. For example, INGAA has noted in comment submissions that approximately 90 percent of Class 3 and Class 4 mileage not in HCAs are presently assessed during IM assessments. This is because, in large part, ILI or pressure testing, by their nature, assess large continuous pipeline segments that may contain some HCA segments but that could also contain significant amounts of non-HCA segments.

While INGAA does not represent all pipeline operators subject to part 192, it does represent the majority of gas transmission operators. PHMSA has determined that, given this level of assessment, it is appropriate and consistent with industry direction to codify requirements for operators to periodically assess certain gas transmission pipelines outside of HCAs to monitor for, detect, and remediate pipeline defects and anomalies. Additionally, to achieve the desired outcome of performing assessments in areas where people live, work, or congregate, while minimizing the cost of identifying such locations, PHMSA is basing the requirements for identifying those locations on processes already being implemented by pipeline operators. More specifically, the MCA definition assumes a similar process used for identifying HCAs, with the exception that the threshold for buildings intended for human occupancy located within the potential impact circle is reduced from 20 to 5.

Because significant non-HCA pipeline mileage has been previously assessed in conjunction with the regular assessment of HCA pipeline segments, PHMSA is allowing operators to count those prior assessments as compliant with the new § 192.710 for the purposes of assessing non-HCAs if those assessments were conducted, and threats remediated, in conjunction with an integrity assessment required by subpart O.

This final rule also requires that the assessment required by the new § 192.710 be conducted using the same methods as adopted for HCAs (see § 192.921, below). Operators may use ''other technology'' as an assessment method, provided the operator notifies PHMSA in accordance with § 192.18.

*§ 192.712 Analysis of Predicted Failure Pressure*

The new requirements for reconfirming MAOP in the new § 192.624 include an option for operators to perform an engineering critical assessment, or ECA, to reconfirm MAOP in lieu of pressure testing and the other methods provided. A key aspect of the ECA analysis is the detailed analysis of the remaining strength of pipe with known or assumed defects. The current Federal Pipeline Safety Regulations in subparts I and O refer to methods for predicting the failure pressure for pipe with corrosion metal loss defects. However, the regulations are silent on performing such analysis for pipe with cracks (including crack-like defects such as selective seam weld corrosion). Therefore, in this final rule, PHMSA is inserting a new section to address the techniques and procedures for analyzing the predicted failure pressures for pipe with corrosion metal loss and cracks or crack-like defects. Examples of technically proven models for calculating predicted failure pressures include: For the brittle failure mode, the Newman-Raju Model [87] and PipeAssess PI™ software; [88] and for the ductile failure mode, Modified Log-Secant Model,[89] API RP 579–1 [90]—Level II or Level III, CorLas™ software,[91] PAFFC Model,[92] and PipeAssess PI™ software. All failure models used for the ECA analysis must be used within its technical parameters for the defect type and the pipe or weld material properties. Conforming changes are being made to applicable sections in subparts I and O to refer to this new section, for consistency, but the basic techniques are unchanged.

As a part of this section, PHMSA is including a new paragraph to address cracks and crack-like defects, which as stated above is a critical function of the ECA analysis. The ECA analysis requires the conservative analysis of any in-service cracks, crack-like defects remaining in the pipe, or the largest possible crack that could remain in the pipe, including crack dimensions (length and depth) to determine the predicted failure pressure (PFP) of each defect; the failure mode (ductile, brittle, or both) for the microstructure; the defect's location and type; the pipeline's operating conditions (including pressure cycling); and failure stress and

[87] Newman, J.C., and Raju; ''Stress Intensity Factors for Cracks in Three Dimensional Finite Bodies Subjected to Tension and Bending Loads;'' *Computational Methods in the Mechanics of Fracture;* Elsevier; 1986; pp. 311–334.

[88] Interim Report for Phase II—Task 5 of the Comprehensive Study to Understand Longitudinal ERW Seam Failures, ''Summary Report for an Integrity Management Software Tool,'' May 2017. *https://primis.phmsa.dot.gov/matrix/FilGet.rdm?fil=11469.*

[89] ASTM International, ASTM STP 536, ''Failure Stress Levels of Flaws in Pressurized Cylinders,'' 1973.

[90] American Petroleum Institute and American Society of Mechanical Engineers, API 579–1/ASME FFS–1, ''Fitness-For-Service,'' Second Edition, June 2007.

[91] NACE International, NACE Corrosion 96 Paper 255, ''Effect of Stress Corrosion Cracking on Integrity and Remaining Life of Natural Gas Pipelines,'' March 1996.

[92] Pipeline Research Council International, Inc., Topical Report NG–18 No. 193, ''Development and Validation of a Ductile Flaw Growth Analysis for Gas Transmission Line Pipe,'' June 1991.

crack growth analysis to determine the remaining life of the pipeline. An ECA must use the techniques and procedures developed and confirmed through the research findings provided by PHMSA and other reputable technical sources for longitudinal seam and crack growth, such as the Comprehensive Study to Understand Longitudinal ERW Seam Research & Development study task reports: Battelle Final Reports (''Battelle's Experience with ERW and Flash Weld Seam Failures: Causes and Implications''—Task 1.4), Report No. 13–002 (''Models for Predicting Failure Stress Levels for Defects Affecting ERW and Flash-Welded Seams''—Subtask 2.4), Report No. 13–021 (''Predicting Times to Failure for ERW Seam Defects that Grow by Pressure-Cycle-Induced Fatigue''—Subtask 2.5), and ''Final Summary Report and Recommendations for the Comprehensive Study to Understand Longitudinal ERW Seam Failures—Phase 1''—Task 4.5), which can be found online at: *https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=390.* Operators wanting to use assumed Charpy V-notch toughness values differing from the prescribed values as a part of fracture mechanics analysis must notify PHMSA in accordance with § 192.18.

*§ 192.750 Launcher and Receiver Safety*

PHMSA has determined that more explicit requirements are needed for safety when performing maintenance activities that use launchers and receivers to insert and remove maintenance tools and devices, as such facilities are subject to pipeline system pressures. The current regulations for hazardous liquid pipelines at 49 CFR part 195 have, since 1981, contained such safety requirements for scraper and sphere facilities (§ 195.426). However, the regulations for natural gas pipelines do not similarly require controls or instrumentation to protect against inadvertent breaches of system integrity due to the incorrect operation of launchers and receivers for ILI tools, scraper, and sphere facilities. Accordingly, this final rule is adding a new § 192.750 to require a suitable means to relieve pressure in the barrel and either a means to indicate the pressure in the barrel or a means to prevent opening if pressure has not been relieved.

*§ 192.805 Qualification Program*

PHMSA is revising the Federal Pipeline Safety Regulations to include a new § 192.18 that provides instructions for submitting notifications to PHMSA whenever required by part 192. PHMSA is making conforming changes to § 192.805 to refer to the new § 192.18.

*§ 192.909 How can an operator change its integrity management program?*

PHMSA is revising the Federal Pipeline Safety Regulations to include a new § 192.18 that provides instructions for submitting notifications to PHMSA whenever required by part 192. PHMSA is making conforming changes to § 192.909 to refer to the new § 192.18.

*§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?*

Section 29 of the 2011 Pipeline Safety Act requires operators to consider seismicity when evaluating threats. Accordingly, PHMSA is revising § 192.917(a)(3) to include seismicity of the area in evaluating the threat of outside force damage. To address NTSB recommendation P–11–15, PHMSA is also revising the criteria in § 192.917(e)(3) for addressing the threat of manufacturing and construction defects by requiring that a pipeline segment must have been pressure tested to a minimum of 1.25 times MAOP to conclude latent defects are stable. Section 192.917(e)(4) has additional requirements for the assessment of low-frequency ERW pipe with seam failures. It now requires usage of the appropriate technology to assess low-frequency ERW pipe, including seam cracking and selective seam weld corrosion. Pipe with seam cracks must be evaluated using fracture mechanics modeling for failure stress pressures and cyclic fatigue crack growth analysis to estimate the remaining life of the pipe in accordance with § 192.712.

Lastly, the integrity management requirements to address specific threats in § 192.917(e) include requirements for the major causes of pipeline incidents, such as corrosion, third-party damage, cyclic fatigue, manufacturing and construction defects, and electric resistance welded pipe. However, § 192.917(e) does not address cracks and crack-like defects. Therefore, PHMSA is adding a new paragraph, § 192.917(e)(6), to include specific IM requirements for addressing the threat of cracks and crack-like defects (including, but not limited to, stress corrosion cracking or other environmentally assisted cracking, seam defects, selective seam weld corrosion, girth weld cracks, hook cracks, and fatigue cracks) comparable to the other types of threats addressed in § 192.917(e).

*§ 192.921 How is the baseline assessment to be conducted?*

Section 192.921 requires that pipelines subject to the IM regulations have an integrity assessment. The current regulations allow operators to use ILI tools; pressure testing in accordance with subpart J; direct assessment for the threats of external corrosion, internal corrosion, and stress corrosion cracking; and other technology that the operator demonstrates provides an equivalent level of understanding of the condition of the pipeline. Following the PG&E incident, PHMSA determined that the baseline assessment methods should be clarified and strengthened to emphasize ILI use and pressure testing over direct assessment. At San Bruno, PG&E relied heavily on direct assessment under circumstances for which direct assessment was not effective nor appropriate for the pipeline seam type and the threats to the pipeline. Therefore, this final rule requires that direct assessment only be allowed to assess the threats for which the specific direct assessment process is appropriate.

This final rule also adds three additional assessment methods for operators to use: (1) A ''spike'' hydrostatic pressure test, which is particularly well-suited to address time-dependent threats, such as stress corrosion cracking and other cracking or crack-like defects that can include manufacturing- and construction-related defects; (2) guided wave ultrasonic testing (GWUT), which is particularly appropriate in cases where short pipeline segments, such as road or railroad crossings, are difficult to assess; and (3) excavation with direct *in situ* examination. Based upon the threat assessed, examples of appropriate non-destructive examination methods for *in situ* examination can include ultrasonic testing, phased array ultrasonic testing, inverse wave field extrapolation, radiography, or magnetic particle inspection.

The current regulations indicate that ILI tools are an acceptable assessment method for the threats that the particular ILI tool type can assess. PHMSA is clarifying in this final rule that the use of ILI tools is appropriate for threats such as corrosion, deformation and mechanical damage (including dents, gouges, and grooves), material cracking and crack-like defects (*e.g.,* stress corrosion cracking, selective seam weld corrosion, environmentally assisted cracking, and girth weld cracks), and hard spots with cracking. As discussed above, this final rule

strengthens guidance in this area by adding a new § 192.493 to require compliance with the requirements and recommendations of API STD 1163–2005, NACE SP0102–2010, and ANSI/ASNT ILI–PQ–2005 when conducting in-line inspection of pipelines. Accordingly, PHMSA revises § 192.921(a)(1) in this final rule to require compliance with § 192.493 instead of ASME B31.8S for baseline ILI assessments for covered segments.

GWUT has been used by pipeline operators for several years. Previously, operators were required by § 192.921(a)(4) to submit a notification to PHMSA as an ''other technology'' assessment method to use GWUT. In 2007, PHMSA developed guidelines for how it would evaluate notifications for the use of GWUT. These guidelines have been effectively used for over 9 years, and PHMSA has confidence that operators can use GWUT to assess the integrity of short segments of pipe against corrosion threats. In this final rule, PHMSA is incorporating these guidelines into a new Appendix F, which is referenced in § 192.921. Therefore, operators would no longer be required to notify PHMSA to use GWUT.

ASME B31.8S, section 6.1, describes both excavation and direct *in situ* examination as specialized integrity assessment methods applicable to particular circumstances:

> It is important to note that some of the integrity assessment methods discussed in para. 6 only provide indications of defects. Examination using visual inspection and a variety of nondestructive examination (NDE) techniques are required, followed by evaluation of these inspection results in order to characterize the defect. The operator may choose to go directly to examination and evaluation for the entire length of the pipeline segment being assessed, in lieu of conducting inspections. For example, the operator may wish to conduct visual examination of aboveground piping for the external corrosion threat. Since the pipe is accessible for this technique and external corrosion can be readily evaluated, performing in-line inspection is not necessary.

PHMSA is clarifying its requirements to explicitly add excavation and direct *in situ* examination as an acceptable assessment method. As previously discussed under § 192.710, PHMSA intends for operators to assess non-HCA pipe with the same methods as HCA pipe. Therefore, PHMSA has standardized the assessment methods between both the IM and non-IM sections. Operators wishing to use ''other technology'' differing from the prescribed acceptable assessment methods must notify PHMSA in accordance with § 192.18.

*§ 192.933 What actions must be taken to address integrity issues?*

PHMSA is revising the Federal Pipeline Safety Regulations to include a new § 192.18 that provides instructions for submitting notifications to PHMSA whenever required by part 192. PHMSA is making conforming changes to § 192.933 to refer to the new § 192.18.

*§ 192.935 What additional preventive and mitigative measures must an operator take?*

Section 29 of the 2011 Pipeline Safety Act requires operators to consider seismicity when evaluating threats. Accordingly, PHMSA is revising § 192.935(b)(2) to include seismicity of the area when evaluating preventive and mitigative measures with respect to the threat of outside force damage.

*§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

Section 192.937 requires that operators continue to periodically assess HCA pipeline segments and periodically evaluate the integrity of each covered pipeline segment. PHMSA determined that conforming amendments would be needed to implement, and be consistent with, the changes discussed above for § 192.921. Accordingly, this final rule requires that reassessments use the same assessment methods specified in § 192.921. Operators wishing to use ''other technology'' differing from the prescribed acceptable assessment methods must notify PHMSA in accordance with § 192.18.

*§ 192.939 What are the required reassessment intervals?*

Section 192.939 specifies reassessment intervals for pipelines subject to IM requirements. Section 5 of the 2011 Pipeline Safety Act includes a technical correction that clarified that periodic reassessments must occur at a minimum of once every 7 calendar years, but that the Secretary may extend such deadline for an additional 6 months if the operator submits written notice to the Secretary with sufficient justification of the need for the extension. PHMSA expects that any justification, at a minimum, must demonstrate that the extension does not pose a safety risk. In this final rule, PHMSA is codifying this technical correction.

As explained in PHMSA IM FAQ–41, the maximum interval for reassessment may be set using the specified number of calendar years. The use of calendar years is specific to gas pipeline reassessment interval years and does not alter the actual year interval requirements which appear elsewhere in the code for various inspection and maintenance requirements.

Additionally, PHMSA is revising § 192.939 to include a new § 192.18 that provides instructions for submitting notifications to PHMSA whenever required by part 192. PHMSA is making conforming changes to § 192.939 to refer to the new § 192.18.

*§ 192.949 How does an operator notify PHMSA? (Removed and Reserved)*

This rulemaking includes several requirements that allow operators to notify PHMSA of proposed alternative approaches to achieving the objective of the minimum safety standards. This is comparable to existing notification requirements in subpart O for pipelines subject to the IM regulations. Because PHMSA is expanding the use of notifications to pipeline segments for which subpart O does not apply (*i.e.,* to non-HCA pipeline segments), PHMSA is adding a new § 192.18 that contains the procedure for submitting such notifications. As such, § 192.949 is no longer needed and is being removed and reserved.

*Appendix F to Part 192—Criteria for Conducting Integrity Assessments Using Guided Wave Ultrasonic Testing (GWUT)*

As discussed under § 192.921 above, a new Appendix F to part 192 is needed to provide specific requirements and acceptance criteria for the use of GWUT as an integrity assessment method. Operators must apply all 18 criteria defined in Appendix F to use GWUT as an integrity assessment method. If an operator applies GWUT technology in a manner that does not conform with the guidelines in Appendix F, it would be considered ''other technology'' for the purposes of §§ 192.710, 192.921, and 192.937.

## VI. Standards Incorporated by Reference

### *A. Summary of New and Revised Standards*

Consistent with the amendments in this document, PHMSA is incorporating by reference several standards as described below. Some of these standards are already incorporated by reference into the Federal Pipeline Safety Regulations and are being extended to other sections of the regulations. Other standards provide a technical basis for corresponding regulatory changes in this final rule.

• API STD 1163, ''In-Line Inspection Systems Qualification,'' Second edition, April 2013, Reaffirmed August 2018.

This standard covers the use of ILI systems for onshore and offshore gas and hazardous liquid pipelines. This includes, but is not limited to, tethered, self-propelled, or free-flowing systems for detecting metal loss, cracks, mechanical damage, pipeline geometries, and pipeline location or mapping. The standard applies to both existing and developing technologies. This standard is an umbrella document that provides performance-based requirements for ILI systems, including procedures, personnel, equipment, and associated software. The incorporation of this standard into the Federal Pipeline Safety Regulations will provide rigorous processes for qualifying the equipment, people, processes, and software used in in-line inspections.

• ANSI/ASNT ILI–PQ–2005(2010), ''In-line Inspection Personnel Qualification and Certification,'' Reapproved October 11, 2010.

This standard establishes minimum requirements for the qualification and certification of in-line inspection personnel whose jobs demand specific knowledge of the technical principles of in-line inspection technologies, operations, regulatory requirements, and industry standards as those are applicable to pipeline systems. The employer-based standard includes qualification and certification for Levels I, II, and III. The incorporation of this standard into the Federal Pipeline Safety Regulations provides for certification and qualification requirements that are not otherwise addressed in part 192 and will promote a higher level of safety by establishing consistent standards to qualify the equipment, people, processes, and software used in in-line inspections.

• NACE Standard Practice 0102–2010, ''In-Line Inspection of Pipelines,'' Revised 2010–03–13.

This standard outlines a process of related activities that a pipeline operator can use to plan, organize, and execute an ILI project, and it includes guidelines pertaining to ILI data management and data analysis. This standard is intended for individuals and teams, including engineers, O&M personnel, technicians, specialists, construction personnel, and inspectors, involved in planning, implementing, and managing ILI projects and programs. The incorporation of this standard into the Federal Pipeline Safety Regulations would promote a higher level of safety by establishing consistent standards to qualify the equipment, people, processes, and software used in in-line inspections.

PHMSA is also extending the applicability of the following three currently incorporated-by-reference standards to new sections of the Federal Pipeline Safety Regulations:

• ASME/ANSI B16.5–2003, ''Pipe Flanges and Flanged Fittings,'' October 2004, IBR approved for § 192.607(f).

This standard covers pressure-temperature ratings, materials, dimensions, tolerances, marking, testing, and methods of designating openings for pipe flanges and flanged fittings. The standard includes requirements and recommendations regarding flange bolting, flange gaskets, and flange joints. This standard is intended for manufacturers, owners, employers, users, and others concerned with the specification, buying, maintenance, training, and safe use of valves with pressure equipment. The incorporation of this standard promotes industry best practices and operational, cost, and safety benefits.

• ASME/ANSI B31G–1991 (Reaffirmed 2004), ''Manual for Determining the Remaining Strength of Corroded Pipelines,'' 2004, IBR approved for §§ 192.632(a) and 192.712(b).

This document provides guidance for the evaluation of metal loss in pressurized pipelines and piping systems. It is applicable to all pipelines and piping systems that are part of the scope of the transportation pipeline codes that are part of ASME B31 Code for Pressure Piping, namely: ASME B31.4, Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids; ASME B31.8, Gas Transmission and Distribution Piping Systems; ASME B31.11, Slurry Transportation Piping Systems; and ASME B31.12, Hydrogen Piping and Pipelines, Part PL.

• AGA, Pipeline Research Committee Project, PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989), IBR approved for §§ 192.632(a) and 192.712(b).

This document was developed from the Modified B31G method to allow assessment of a river bottom profile of a corroded area on a pipeline to provide more accurate predictions of the pipeline's remaining strength, and it was adapted into a software program known as RSTRENG. Pipeline operators can use RSTRENG to calculate a pipeline's predicted failure pressure and safe pressure when determining operating pressures and anomaly response times.

The incorporation by reference of ASME/ANSI B31.8S was approved for §§ 192.921 and 192.937 as of January 14, 2004. That approval is unaffected by the section revisions in this final rule.

*B. Availability of Standards Incorporated by Reference*

PHMSA currently incorporates by reference into 49 CFR parts 192, 193, and 195 all or parts of more than 60 standards and specifications developed and published by standard developing organizations (SDO). In general, SDOs update and revise their published standards every 2 to 5 years to reflect modern technology and best technical practices. ASTM often updates some of its more widely used standards every year, and sometimes multiple editions of standards are published in a given year.

In accordance with the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), PHMSA has the responsibility for determining which currently referenced standards should be updated, revised, or removed, and which standards should be added to 49 CFR parts 192, 193, and 195. Revisions to incorporated by reference materials in parts 192, 193, and 195 are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials.

On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Public Law 112–90. Section 24 of that law states: ''Beginning 1 year after the date of enactment of this subsection, the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an internet website.'' 49 U.S.C. 60102(p).

On August 9, 2013, Public Law 113–30 revised 49 U.S.C. 60102(p) to replace ''1 year'' with ''3 years'' and remove the phrases ''guidance or'' and, ''on an internet website.'' This resulted in the current language in 49 U.S.C. 60102(p), which now reads as follows:

Beginning 3 years after the date of enactment of this subsection, the Secretary may not issue a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge.

On November 7, 2014, the Office of the Federal Register issued a final rule that revised 1 CFR 51.5 to require that Federal agencies include a discussion in the preamble of the final rule ''the ways the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.'' 79 FR 66278. In relation to this rulemaking, PHMSA has contacted each SDO and has requested free public access of each standard that has been incorporated by reference. The SDOs agreed to make viewable copies of the incorporated standards available to the public at no cost. Pipeline operators interested in purchasing these standards can contact the individual and applicable standards organizations. The contact information is provided in this rulemaking action, see § 192.7.

In addition, PHMSA will provide individual members of the public temporary access to any standard that is incorporated by reference that is not otherwise available for free. Requests for access can be sent to the following email address: *PHMSAPHPStandards@dot.gov.*

## VII. Regulatory Analysis and Notices

### *A. Statutory/Legal Authority for This Rulemaking*

This final rule is published under the authority of the Federal Pipeline Safety Statutes (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities, as delegated to the PHMSA Administrator under 49 CFR 1.97.

PHMSA is revising the ''Authority'' entry for parts 191 and 192 to include a citation to a provision of the Mineral Leasing Act (MLA), specifically, 30 U.S.C. 185(w)(3). Section 185(w)(3) provides that ''[p]eriodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.'' The Secretary has delegated this responsibility to PHMSA (49 CFR 1.97). PHMSA has traditionally complied with § 185(w)(3) through the issuance of its pipeline safety regulations, which require annual examinations and prompt reporting for all or most of the pipelines they cover. PHMSA is making this change to be consistent with and make clear its long-standing position that the agency complies with the MLA through the issuance of pipeline safety regulations.

### *B. Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures*

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This action has been determined to be significant under Executive Order 12866. It is also considered significant under the Regulatory Policies and Procedures of the Department of Transportation because of substantial congressional, State, industry, and public interest in pipeline safety. The final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and is consistent with the Executive Order 12866 requirements and 49 U.S.C. 60102(b)(5)–(6). 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). This final rule is considered an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's RIA.

The table below summarizes the annualized costs for the provisions in the final rule. These estimates reflect the timing of the compliance actions taken by operators and are annualized, where applicable, over 21 years and discounted to 2017 using rates of 3 percent and 7 percent. PHMSA estimates incremental costs for the final requirements in Section 5 of the RIA. PHMSA finds that the other final rule requirements will not result in an incremental cost. Additionally, PHMSA did not quantify the cost savings from the material properties verification provisions under this final rule compared to the existing regulations. The costs of this final rule reflect incremental integrity assessments, MAOP reconfirmation actions, and ILI launcher and receiver upgrades; PHMSA estimates the annualized cost of this rule is $32.7 million at a 7 percent discount rate.

SUMMARY OF ANNUALIZED COSTS, 2019–2039

[$2017 thousands]

| Provision | Annualized cost | |
|---|---|---|
| | 3% Discount rate | 7% Discount rate |
| 1. MAOP Reconfirmation & Material Properties Verification | $25.9 | $27.9 |
| 2. Seismicity | 0 | 0 |
| 3. Six-Month Grace Period for Seven Calendar-Year Reassessment Intervals | 0 | 0 |
| 4. In-Line Inspection Launcher/Receiver Safety | 0.03 | 0.04 |
| 5. MAOP Exceedance Reports | 0 | 0 |
| 6. Strengthening Requirements for Assessment Methods | 0 | 0 |
| 7. Assessments Outside HCAs | 5.48 | 4.71 |
| 8. Related Records Provisions | 0 | 0 |
| Total | 31.4 | 32.7 |

The benefits of the final rule will depend on the degree to which compliance actions result in additional safety measures, relative to the current baseline, and the effectiveness of these measures in preventing or mitigating future pipeline releases or other incidents. For the final rule RIA, PHMSA did not monetize benefits. The rule's benefits are discussed qualitatively instead.

For more information, please see the RIA in the docket for this rulemaking.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Fairness Act of 1996, requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for any final rule subject to notice-and-comment rulemaking under the Administrative Procedure Act unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. PHMSA prepared a FRFA which is available in the docket for the rulemaking.

*D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

PHMSA analyzed this final rule per the principles and criteria in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this final rule would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Paperwork Reduction Act*

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. On April 18, 2016, PHMSA published an NPRM seeking public comments on the revision of the Federal Pipeline Safety Regulations applicable to the safety of gas transmission pipelines and gas gathering pipelines. During that time, PHMSA proposed changes to information collections that are no longer included in this final rule. PHMSA determined it would be more effective to advance a rulemaking that focuses on the mandates from the 2011 Pipeline Safety Act and split out the other provisions contained in the NPRM into two other separate rules. As such, PHMSA has removed all references to those collections previously contained in the NPRM and will submit information collection revision requests to OMB based on the requirements solely contained within this final rule.

PHMSA estimates that the proposals in this final rule will impact the information collections described below. These information collections are contained in the PSR, 49 CFR parts 190–199. The following information is provided for each information collection: (1) Title of the information collection, (2) OMB control number, (3) Current expiration date, (4) Type of request, (5) Abstract of the information collection activity, (6) Description of affected public, (7) Estimate of total annual reporting and recordkeeping burden, and (8) Frequency of collection. The information collection burden for the following information collections are estimated to be revised as follows:

*1. Title:* Recordkeeping Requirements for Gas Pipeline Operators.

*OMB Control Number:* 2137–0049.

*Current Expiration Date:* 09/30/2021.

*Abstract:* A person owning or operating a natural gas pipeline facility is required to maintain records, make reports, and provide information to the Secretary of Transportation at the Secretary's request. Based on the proposed revisions in this rule, 25 new recordkeeping requirements are being added to the pipeline safety regulations for owners and operators of natural gas pipelines. Therefore, PHMSA expects to add 24,609 responses and 3,740 hours to this information collection because of the provisions in this final rule.

*Affected Public:* Natural Gas Pipeline Operators.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 3,861,470.

*Total Annual Burden Hours:* 1,674,810.

*Frequency of Collection:* On occasion.

*2. Title:* Notification Requirements for Gas Transmission Pipeline Operators.

*OMB Control Number:* New Collection. Will Request from OMB.

*Current Expiration Date:* TBD.

*Abstract:* A person owning or operating a natural gas pipeline facility is required to provide information to the Secretary of Transportation at the Secretary's request. Based on the proposed revisions in this rule, 10 new notification requirements are being added to the pipeline safety regulations for owners and operators of natural gas pipelines. Therefore, PHMSA expects to add 721 responses and 1,070 hours because of the notification requirements in this final rule.

*Affected Public:* Gas Transmission operators.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 721.

*Total Annual Burden Hours:* 1,070.

*Frequency of Collection:* On occasion.

*3. Title:* Annual Reports for Gas Pipeline Operators.

*OMB Control Number:* 2137–0522.

*Current Expiration Date:* 8/31/2020.

*Abstract:* This information collection covers the collection of annual report data from natural gas pipeline operators. PHMSA is revising the Gas Transmission and Gas Gathering Annual Report (form PHMSA F7 100.2–1) to collect additional information including mileage of pipe subject to the MAOP reconfirmation and MCA criteria. Based on the proposed revisions, PHMSA estimates that the Annual Report will take an additional 5 hours per report to complete to include the newly required data, increasing the burden for each report to 47 burden hours for an overall burden increase of 7,200 burden hours across all operators.

*Affected Public:* Natural Gas Pipeline Operators.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 10,852.

*Total Annual Burden Hours:* 83,151.

*Frequency of Collection:* On occasion.

*4. Title:* Incident for Natural Gas Pipeline Operators.

*OMB Control Number:* 2137–0635.

*Current Expiration Date:* 4/30/2022.

*Abstract:* This information collection covers the collection of incident report data from natural gas pipeline operators. PHMSA is revising the Gas Transmission Incident Report to have operators indicate whether incidents occur inside Moderate Consequence Areas. PHMSA does not expect there to be an increase in burden for the reporting of Gas Transmission incident data.

*Affected Public:* Natural Gas Pipeline Operators.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses*: 301.

*Total Annual Burden Hours:* 3,612.

*Frequency of Collection:* On occasion.

Requests for copies of these information collections should be directed to Angela Hill or Cameron Satterthwaite, Office of Pipeline Safety (PHP–30), Pipeline Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone (202) 366–4595.

*Comments are invited on:*

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(d) Ways to minimize the burden of the collection of information on those

who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Those desiring to comment on these information collections should send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street NW, Washington, DC 20503. Comments should be submitted on or prior to October 31, 2019. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.* OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if received within 30 days of publication.

*F. Unfunded Mandates Reform Act of 1995*

An evaluation of Unfunded Mandates Reform Act (UMRA) considerations is performed as part of the Final Regulatory Impact Assessment. PHMSA determined that this final rule does not impose enforceable duties on State, local, or tribal governments or on the private sector of $100 million or more, adjusted for inflation, in any one year and therefore does not have implications under Section 202 of the UMRA of 1995. A copy of the RIA is available for review in the docket.

*G. National Environmental Policy Act*

PHMSA analyzed this final rule in accordance with the National Environmental Policy Act (42 U.S.C. 4332) and determined this action will not significantly affect the quality of the human environment. The Environmental Assessment for this final rule is in the docket.

*H. Executive Order 13132: Federalism*

PHMSA analyzed this final rule in accordance with Executive Order 13132 (''Federalism''). The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This rulemaking action does not impose substantial direct compliance costs on State and local governments. The pipeline safety laws, specifically 49 U.S.C. 60104(c), prohibits State safety regulation of interstate pipelines. Under the pipeline safety law, States have the ability to augment pipeline safety requirements for intrastate pipelines regulated by PHMSA, but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility PHMSA does not regulate. It is these statutory provisions, not the rule, that govern preemption of State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*I. Executive Order 13211*

This final rule is not a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

*J. Privacy Act Statement*

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement, published on April 11, 2000 (65 FR 19476), in the **Federal Register** at: *https://www.govinfo.gov/content/FR-2000-04-11/pdf/00-8505.pdf.*

*K. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects**

*49 CFR Part 191*

MAOP exceedance, Pipeline reporting requirements.

*49 CFR Part 192*

Incorporation by reference, Integrity assessments, Material properties verification, MAOP reconfirmation, Pipeline safety, Predicted failure pressure, Recordkeeping, Risk assessment, Safety devices.

In consideration of the foregoing, PHMSA is amending 49 CFR parts 191 and 192 as follows:

## PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL, INCIDENT, AND OTHER REPORTING

■ 1. The authority citation for part 191 is revised to read as follows:

**Authority:** 30 U.S.C. 185(w)(3), 49 U.S.C. 5121, 60101 *et. seq.,* and 49 CFR 1.97.

■ 2. In § 191.23, paragraph (a)(6) is revised, paragraph (a)(10) is added, and paragraph (b)(4) is revised to read as follows:

**§ 191.23 Reporting safety-related conditions.**

(a) * * *

(6) Any malfunction or operating error that causes the pressure—plus the margin (build-up) allowed for operation of pressure limiting or control devices—to exceed either the maximum allowable operating pressure of a distribution or gathering line, the maximum well allowable operating pressure of an underground natural gas storage facility, or the maximum allowable working pressure of an LNG facility that contains or processes gas or LNG.

* * * * *

(10) For transmission pipelines only, each exceedance of the maximum allowable operating pressure that exceeds the margin (build-up) allowed for operation of pressure-limiting or control devices as specified in the applicable requirements of §§ 192.201, 192.620(e), and 192.739. The reporting requirement of this paragraph (a)(10) is not applicable to gathering lines, distribution lines, LNG facilities, or underground natural gas storage facilities (*See* paragraph (a)(6) of this section).

(b) * * *

(4) Is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing the safety-related condition report. Notwithstanding this exception, a report must be filed for:

(i) Conditions under paragraph (a)(1) of this section, unless the condition is localized corrosion pitting on an effectively coated and cathodically protected pipeline; and

(ii) Any condition under paragraph (a)(10) of this section.

* * * * *

■ 3. Section 191.25 is revised to read as follows:

**§ 191.25 Filing safety-related condition reports.**

(a) Each report of a safety-related condition under § 191.23(a)(1) through (9) must be filed (received by the Associate Administrator) in writing

within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of an operator first determines that the condition exists, but not later than 10 working days after the day a representative of an operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reporting methods and report requirements are described in paragraph (c) of this section.

(b) Each report of a maximum allowable operating pressure exceedance meeting the requirements of criteria in § 191.23(a)(10) for a gas transmission pipeline must be filed (received by the Associate Administrator) in writing within 5 calendar days of the exceedance using the reporting methods and report requirements described in paragraph (c) of this section.

(c) Reports must be filed by email to *InformationResourcesManager@dot.gov* or by facsimile to (202) 366–7128. For a report made pursuant to § 191.23(a)(1) through (9), the report must be headed ''Safety-Related Condition Report.'' For a report made pursuant to § 191.23(a)(10), the report must be headed ''Maximum Allowable Operating Pressure Exceedances.'' All reports must provide the following information:

(1) Name, principal address, and operator identification number (OPID) of the operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name, job title, and business telephone number of person who determined that the condition exists.

(5) Date condition was discovered and date condition was first determined to exist.

(6) Location of condition, with reference to the State (and town, city, or county) or offshore site, and as appropriate, nearest street address, offshore platform, survey station number, milepost, landmark, or name of pipeline.

(7) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and the name of the commodity transported or stored.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up or future corrective action, including the anticipated schedule for starting and concluding such action.

## PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 4. The authority citation for part 192 is revised to read as follows:

**Authority:** 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et. seq.,* and 49 CFR 1.97.

■ 5. In § 192.3, the definitions for ''Engineering critical assessment (ECA)'' and ''Moderate consequence area'' are added in alphabetical order to read as follows:

### § 192.3 Definitions.

* * * * *

*Engineering critical assessment (ECA)* means a documented analytical procedure based on fracture mechanics principles, relevant material properties (mechanical and fracture resistance properties), operating history, operational environment, in-service degradation, possible failure mechanisms, initial and final defect sizes, and usage of future operating and maintenance procedures to determine the maximum tolerable sizes for imperfections based upon the pipeline segment maximum allowable operating pressure.

* * * * *

*Moderate consequence area* means:

(1) An onshore area that is within a potential impact circle, as defined in § 192.903, containing either:

(i) Five or more buildings intended for human occupancy; or

(ii) Any portion of the paved surface, including shoulders, of a designated interstate, other freeway, or expressway, as well as any other principal arterial roadway with 4 or more lanes, as defined in the Federal Highway Administration's *Highway Functional Classification Concepts, Criteria and Procedures, Section 3.1* (see: *https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf*), and that does not meet the definition of high consequence area, as defined in § 192.903.

(2) The length of the moderate consequence area extends axially along the length of the pipeline from the outermost edge of the first potential impact circle containing either 5 or more buildings intended for human occupancy; or any portion of the paved surface, including shoulders, of any designated interstate, freeway, or expressway, as well as any other principal arterial roadway with 4 or more lanes, to the outermost edge of the last contiguous potential impact circle that contains either 5 or more buildings intended for human occupancy, or any portion of the paved surface, including shoulders, of any designated interstate, freeway, or expressway, as well as any other principal arterial roadway with 4 or more lanes.

* * * * *

■ 6. In § 192.5, paragraph (d) is added to read as follows:

### § 192.5 Class locations.

* * * * *

(d) An operator must have records that document the current class location of each pipeline segment and that demonstrate how the operator determined each current class location in accordance with this section.

■ 7. Amend § 192.7 as follows:
■ a. Revise paragraph (a)(1)(ii);
■ b. Add paragraph (b)(12);
■ c. Revise paragraphs (c)(2) and (4);
■ d. Re-designate paragraphs (d) through (j) as paragraphs (e) through (k), respectively;
■ e. Add new paragraphs (d) and (h)(2); and
■ f. Revise newly redesignated paragraph (j)(1).

The revisions and additions read as follows:

### § 192.7 What documents are incorporated by reference partly or wholly in this part?

(a) * * *

(1) * * *

(ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) * * *

(12) API STANDARD 1163, ''In-Line Inspection Systems Qualification,'' Second edition, April 2013, Reaffirmed August 2018, (API STD 1163), IBR approved for § 192.493.

(c) * * *

(2) ASME/ANSI B16.5–2003, ''Pipe Flanges and Flanged Fittings,'' October 2004, (ASME/ANSI B16.5), IBR approved for §§ 192.147(a), 192.279, and 192.607(f).

* * * * *

(4) ASME/ANSI B31G–1991 (Reaffirmed 2004), ''Manual for Determining the Remaining Strength of Corroded Pipelines,'' 2004, (ASME/ANSI B31G), IBR approved for §§ 192.485(c), 192.632(a), 192.712(b), and 192.933(a).

* * * * *

(d) American Society for Nondestructive Testing (ASNT), P.O. Box 28518, 1711 Arlingate Lane, Columbus, OH 43228, phone: 800–222–2768, website: *https://www.asnt.org/.*

(1) ANSI/ASNT ILI–PQ–2005(2010), ''In-line Inspection Personnel Qualification and Certification,'' Reapproved October 11, 2010, (ANSI/ASNT ILI–PQ), IBR approved for § 192.493.

(2) [Reserved]

* * * * *

(h) * * *

(2) NACE Standard Practice 0102–2010, ''In-Line Inspection of Pipelines,'' Revised 2010–03–13, (NACE SP0102), IBR approved for §§ 192.150(a) and 192.493.

* * * * *

(j) * * *

(1) AGA, Pipeline Research Committee Project, PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989), (PRCI PR–3–805 (R–STRENG)), IBR approved for §§ 192.485(c); 192.632(a); 192.712(b); 192.933(a) and (d).

* * * * *

■ 8. In § 192.9, paragraphs (b), (c), and (d)(1), (2), and (6) are revised to read as follows:

**§ 192.9 What requirements apply to gathering lines?**

* * * * *

(b) Offshore lines. An operator of an offshore gathering line must comply with requirements of this part applicable to transmission lines, except the requirements in §§ 192.150, 192.285(e), 192.493, 192.506, 192.607, 192.619(e), 192.624, 192.710, 192.712, and in subpart O of this part.

(c) *Type A lines.* An operator of a Type A regulated onshore gathering line must comply with the requirements of this part applicable to transmission lines, except the requirements in §§ 192.150, 192.285(e), 192.493, 192.506, 192.607, 192.619(e), 192.624, 192.710, 192.712, and in subpart O of this part. However, operators of Type A regulated onshore gathering lines in a Class 2 location may demonstrate compliance with subpart N by describing the processes it uses to determine the qualification of persons performing operations and maintenance tasks.

(d) * * *

(1) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection, and initial testing must be in accordance with requirements of this part applicable to transmission lines except the requirements in §§ 192.67, 192.127, 192.205, 192.227(c), 192.285(e), and 192.506;

(2) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines except the requirements in § 192.493;

* * * * *

(6) Establish the MAOP of the line under § 192.619(a), (b), and (c);

* * * * *

■ 9. Section 192.18 is added to read as follows:

**§ 192.18 How to notify PHMSA.**

(a) An operator must provide any notification required by this part by—

(1) Sending the notification by electronic mail to *InformationResourcesManager@dot.gov;* or

(2) Sending the notification by mail to ATTN: Information Resources Manager, DOT/PHMSA/OPS, East Building, 2nd Floor, E22–321, 1200 New Jersey Ave. SE, Washington, DC 20590.

(b) An operator must also notify the appropriate State or local pipeline safety authority when an applicable pipeline segment is located in a State where OPS has an interstate agent agreement, or an intrastate applicable pipeline segment is regulated by that State.

(c) Unless otherwise specified, if the notification is made pursuant to § 192.506(b), § 192.607(e)(4), § 192.607(e)(5), § 192.624(c)(2)(iii), § 192.624(c)(6), § 192.632(b)(3), § 192.710(c)(7), § 192.712(d)(3)(iv), § 192.712(e)(2)(i)(E), § 192.921(a)(7), or § 192.937(c)(7) to use a different integrity assessment method, analytical method, sampling approach, or technique (*i.e.,* ''other technology'') that differs from that prescribed in those sections, the operator must notify PHMSA at least 90 days in advance of using the other technology. An operator may proceed to use the other technology 91 days after submittal of the notification unless it receives a letter from the Associate Administrator for Pipeline Safety informing the operator that PHMSA objects to the proposed use of other technology or that PHMSA requires additional time to conduct its review.

**§ 192.67 [Redesignated as § 192.69]**

■ 10. Redesignate § 192.67 as § 192.69.

■ 11. Section 192.67 is added to read as follows:

**§ 192.67 Records: Material properties.**

(a) For steel transmission pipelines installed after [July 1, 2020, an operator must collect or make, and retain for the life of the pipeline, records that document the physical characteristics of the pipeline, including diameter, yield strength, ultimate tensile strength, wall thickness, seam type, and chemical composition of materials for pipe in accordance with §§ 192.53 and 192.55. Records must include tests, inspections, and attributes required by the manufacturing specifications applicable at the time the pipe was manufactured or installed.

(b) For steel transmission pipelines installed on or before July 1, 2020], if operators have records that document tests, inspections, and attributes required by the manufacturing specifications applicable at the time the pipe was manufactured or installed, including diameter, yield strength, ultimate tensile strength, wall thickness, seam type, and chemical composition in accordance with §§ 192.53 and 192.55, operators must retain such records for the life of the pipeline.

(c) For steel transmission pipeline segments installed on or before July 1, 2020], if an operator does not have records necessary to establish the MAOP of a pipeline segment, the operator may be subject to the requirements of § 192.624 according to the terms of that section.

■ 12. Section 192.127 is added to read as follows:

**§ 192.127 Records: Pipe design.**

(a) For steel transmission pipelines installed after July 1, 2020], an operator must collect or make, and retain for the life of the pipeline, records documenting that the pipe is designed to withstand anticipated external pressures and loads in accordance with § 192.103 and documenting that the determination of design pressure for the pipe is made in accordance with § 192.105.

(b) For steel transmission pipelines installed on or before July 1, 2020, if operators have records documenting pipe design and the determination of design pressure in accordance with §§ 192.103 and 192.105, operators must retain such records for the life of the pipeline.

(c) For steel transmission pipeline segments installed on or before July 1, 2020, if an operator does not have records necessary to establish the MAOP of a pipeline segment, the operator may be subject to the requirements of § 192.624 according to the terms of that section.

■ 13. In § 192.150, paragraph (a) is revised to read as follows:

**§ 192.150 Passage of internal inspection devices.**

(a) Except as provided in paragraphs (b) and (c) of this section, each new transmission line and each replacement of line pipe, valve, fitting, or other line component in a transmission line, must

be designed and constructed to accommodate the passage of instrumented internal inspection devices in accordance with NACE SP0102, section 7 (incorporated by reference, *see* § 192.7).

* * * * *

■ 14. Section 192.205 is added to read as follows:

**§ 192.205 Records: Pipeline components.**

(a) For steel transmission pipelines installed after July 1, 2020, an operator must collect or make, and retain for the life of the pipeline, records documenting the manufacturing standard and pressure rating to which each valve was manufactured and tested in accordance with this subpart. Flanges, fittings, branch connections, extruded outlets, anchor forgings, and other components with material yield strength grades of 42,000 psi (X42) or greater and with nominal diameters of greater than 2 inches must have records documenting the manufacturing specification in effect at the time of manufacture, including yield strength, ultimate tensile strength, and chemical composition of materials.

(b) For steel transmission pipelines installed on or before July 1, 2020, if operators have records documenting the manufacturing standard and pressure rating for valves, flanges, fittings, branch connections, extruded outlets, anchor forgings, and other components with material yield strength grades of 42,000 psi (X42) or greater and with nominal diameters of greater than 2 inches, operators must retain such records for the life of the pipeline.

(c) For steel transmission pipeline segments installed on or before July 1, 2020, if an operator does not have records necessary to establish the MAOP of a pipeline segment, the operator may be subject to the requirements of § 192.624 according to the terms of that section.

■ 15. In § 192.227, paragraph (c) is added to read as follows:

**§ 192.227 Qualification of welders.**

* * * * *

(c) For steel transmission pipe installed after July 1, 2021, records demonstrating each individual welder qualification at the time of construction in accordance with this section must be retained for a minimum of 5 years following construction.

■ 16. In § 192.285, paragraph (e) is added to read as follows:

**§ 192.285 Plastic pipe: Qualifying persons to make joints.**

* * * * *

(e) For transmission pipe installed after July 1, 2021, records demonstrating each person's plastic pipe joining qualifications at the time of construction in accordance with this section must be retained for a minimum of 5 years following construction.

■ 17. Section 192.493 is added to read as follows:

**§ 192.493 In-line inspection of pipelines.**

When conducting in-line inspections of pipelines required by this part, an operator must comply with API STD 1163, ANSI/ASNT ILI–PQ, and NACE SP0102, (incorporated by reference, *see* § 192.7). Assessments may be conducted using tethered or remotely controlled tools, not explicitly discussed in NACE SP0102, provided they comply with those sections of NACE SP0102 that are applicable.

■ 18. Section 192.506 is added to read as follows:

**§ 192.506 Transmission lines: Spike hydrostatic pressure test.**

(a) *Spike test requirements.* Whenever a segment of steel transmission pipeline that is operated at a hoop stress level of 30 percent or more of SMYS is spike tested under this part, the spike hydrostatic pressure test must be conducted in accordance with this section.

(1) The test must use water as the test medium.

(2) The baseline test pressure must be as specified in the applicable paragraphs of § 192.619(a)(2) or § 192.620(a)(2), whichever applies.

(3) The test must be conducted by maintaining a pressure at or above the baseline test pressure for at least 8 hours as specified in § 192.505.

(4) After the test pressure stabilizes at the baseline pressure and within the first 2 hours of the 8-hour test interval, the hydrostatic pressure must be raised (spiked) to a minimum of the lesser of 1.5 times MAOP or 100% SMYS. This spike hydrostatic pressure test must be held for at least 15 minutes after the spike test pressure stabilizes.

(b) *Other technology or other technical evaluation process.* Operators may use other technology or another process supported by a documented engineering analysis for establishing a spike hydrostatic pressure test or equivalent. Operators must notify PHMSA 90 days in advance of the assessment or reassessment requirements of this subchapter. The notification must be made in accordance with § 192.18 and must include the following information:

(1) Descriptions of the technology or technologies to be used for all tests, examinations, and assessments;

(2) Procedures and processes to conduct tests, examinations, assessments, perform evaluations, analyze defects, and remediate defects discovered;

(3) Data requirements, including original design, maintenance and operating history, anomaly or flaw characterization;

(4) Assessment techniques and acceptance criteria;

(5) Remediation methods for assessment findings;

(6) Spike hydrostatic pressure test monitoring and acceptance procedures, if used;

(7) Procedures for remaining crack growth analysis and pipeline segment life analysis for the time interval for additional assessments, as required; and

(8) Evidence of a review of all procedures and assessments by a qualified technical subject matter expert.

■ 19. In § 192.517, paragraph (a) introductory text is revised to read as follows:

**§ 192.517 Records: Tests.**

(a) An operator must make, and retain for the useful life of the pipeline, a record of each test performed under §§ 192.505, 192.506, and 192.507. The record must contain at least the following information:

* * * * *

■ 20. Section 192.607 is added to read as follows:

**§ 192.607 Verification of Pipeline Material Properties and Attributes: Onshore steel transmission pipelines.**

(a) *Applicability.* Wherever required by this part, operators of onshore steel transmission pipelines must document and verify material properties and attributes in accordance with this section.

(b) *Documentation of material properties and attributes.* Records established under this section documenting physical pipeline characteristics and attributes, including diameter, wall thickness, seam type, and grade (*e.g.,* yield strength, ultimate tensile strength, or pressure rating for valves and flanges, etc.), must be maintained for the life of the pipeline and be traceable, verifiable, and complete. Charpy v-notch toughness values established under this section needed to meet the requirements of the ECA method at § 192.624(c)(3) or the fracture mechanics requirements at § 192.712 must be maintained for the life of the pipeline.

(c) *Verification of material properties and attributes.* If an operator does not have traceable, verifiable, and complete records required by paragraph (b) of this section, the operator must develop and implement procedures for conducting nondestructive or destructive tests, examinations, and assessments in order to verify the material properties of aboveground line pipe and components, and of buried line pipe and components when excavations occur at the following opportunities: Anomaly direct examinations, *in situ* evaluations, repairs, remediations, maintenance, and excavations that are associated with replacements or relocations of pipeline segments that are removed from service. The procedures must also provide for the following:

(1) For nondestructive tests, at each test location, material properties for minimum yield strength and ultimate tensile strength must be determined at a minimum of 5 places in at least 2 circumferential quadrants of the pipe for a minimum total of 10 test readings at each pipe cylinder location.

(2) For destructive tests, at each test location, a set of material properties tests for minimum yield strength and ultimate tensile strength must be conducted on each test pipe cylinder removed from each location, in accordance with API Specification 5L.

(3) Tests, examinations, and assessments must be appropriate for verifying the necessary material properties and attributes.

(4) If toughness properties are not documented, the procedures must include accepted industry methods for verifying pipe material toughness.

(5) Verification of material properties and attributes for non-line pipe components must comply with paragraph (f) of this section.

(d) *Special requirements for nondestructive Methods.* Procedures developed in accordance with paragraph (c) of this section for verification of material properties and attributes using nondestructive methods must:

(1) Use methods, tools, procedures, and techniques that have been validated by a subject matter expert based on comparison with destructive test results on material of comparable grade and vintage;

(2) Conservatively account for measurement inaccuracy and uncertainty using reliable engineering tests and analyses; and

(3) Use test equipment that has been properly calibrated for comparable test materials prior to usage.

(e) *Sampling multiple segments of pipe.* To verify material properties and attributes for a population of multiple, comparable segments of pipe without traceable, verifiable, and complete records, an operator may use a sampling program in accordance with the following requirements:

(1) The operator must define separate populations of similar segments of pipe for each combination of the following material properties and attributes: Nominal wall thicknesses, grade, manufacturing process, pipe manufacturing dates, and construction dates. If the dates between the manufacture or construction of the pipeline segments exceeds 2 years, those segments cannot be considered as the same vintage for the purpose of defining a population under this section. The total population mileage is the cumulative mileage of pipeline segments in the population. The pipeline segments need not be continuous.

(2) For each population defined according to paragraph (e)(1) of this section, the operator must determine material properties at all excavations that expose the pipe associated with anomaly direct examinations, *in situ* evaluations, repairs, remediations, or maintenance, except for pipeline segments exposed during excavation activities pursuant to § 192.614, until completion of the lesser of the following:

(i) One excavation per mile rounded up to the nearest whole number; or

(ii) 150 excavations if the population is more than 150 miles.

(3) Prior tests conducted for a single excavation according to the requirements of paragraph (c) of this section may be counted as one sample under the sampling requirements of this paragraph (e).

(4) If the test results identify line pipe with properties that are not consistent with available information or existing expectations or assumed properties used for operations and maintenance in the past, the operator must establish an expanded sampling program. The expanded sampling program must use valid statistical bases designed to achieve at least a 95% confidence level that material properties used in the operation and maintenance of the pipeline are valid. The approach must address how the sampling plan will be expanded to address findings that reveal material properties that are not consistent with all available information or existing expectations or assumed material properties used for pipeline operations and maintenance in the past. Operators must notify PHMSA in advance of using an expanded sampling approach in accordance with § 192.18.

(5) An operator may use an alternative statistical sampling approach that differs from the requirements specified in paragraph (e)(2) of this section. The alternative sampling program must use valid statistical bases designed to achieve at least a 95% confidence level that material properties used in the operation and maintenance of the pipeline are valid. The approach must address how the sampling plan will be expanded to address findings that reveal material properties that are not consistent with all available information or existing expectations or assumed material properties used for pipeline operations and maintenance in the past. Operators must notify PHMSA in advance of using an alternative sampling approach in accordance with § 192.18.

(f) *Components.* For mainline pipeline components other than line pipe, an operator must develop and implement procedures in accordance with paragraph (c) of this section for establishing and documenting the ANSI rating or pressure rating (in accordance with ASME/ANSI B16.5 (incorporated by reference, *see* § 192.7)),

(1) Operators are not required to test for the chemical and mechanical properties of components in compressor stations, meter stations, regulator stations, separators, river crossing headers, mainline valve assemblies, valve operator piping, or cross-connections with isolation valves from the mainline pipeline.

(2) Verification of material properties is required for non-line pipe components, including valves, flanges, fittings, fabricated assemblies, and other pressure retaining components and appurtenances that are:

(i) Larger than 2 inches in nominal outside diameter,

(ii) Material grades of 42,000 psi (Grade X–42) or greater, or

(iii) Appurtenances of any size that are directly installed on the pipeline and cannot be isolated from mainline pipeline pressures.

(3) Procedures for establishing material properties of non-line pipe components must be based on the documented manufacturing specification for the components. If specifications are not known, usage of manufacturer's stamped, marked, or tagged material pressure ratings and material type may be used to establish pressure rating. Operators must document the method used to determine the pressure rating and the findings of that determination.

(g) *Uprating.* The material properties determined from the destructive or nondestructive tests required by this

section cannot be used to raise the grade or specification of the material, unless the original grade or specification is unknown and MAOP is based on an assumed yield strength of 24,000 psi in accordance with § 192.107(b)(2).

■ 21. In § 192.619, the introductory text of paragraphs (a) introductory text and (a)(2) and (4) are revised and paragraphs (e) and (f) are added to read as follows:

**§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.**

(a) No person may operate a segment of steel or plastic pipeline at a pressure that exceeds a maximum allowable operating pressure (MAOP) determined under paragraph (c), (d), or (e) of this section, or the lowest of the following:

* * * * *

(2) The pressure obtained by dividing the pressure to which the pipeline segment was tested after construction as follows:

(i) For plastic pipe in all locations, the test pressure is divided by a factor of 1.5.

(ii) For steel pipe operated at 100 psi (689 kPa) gage or more, the test pressure is divided by a factor determined in accordance with the Table 1 to paragraph (a)(2)(ii):

TABLE 1 TO PARAGRAPH (a)(2)(ii)

| Class location | Installed before (Nov. 12, 1970) | Factors,[1] segment— | | |
|---|---|---|---|---|
| | | Installed after (Nov. 11, 1970) and before July 1, 2020 | Installed on or after July 1, 2020 | Converted under § 192.14 |
| 1 | 1.1 | 1.1 | 1.25 | 1.25 |
| 2 | 1.25 | 1.25 | 1.25 | 1.25 |
| 3 | 1.4 | 1.5 | 1.5 | 1.5 |
| 4 | 1.4 | 1.5 | 1.5 | 1.5 |

[1] For offshore pipeline segments installed, uprated or converted after July 31, 1977, that are not located on an offshore platform, the factor is 1.25. For pipeline segments installed, uprated or converted after July 31, 1977, that are located on an offshore platform or on a platform in inland navigable waters, including a pipe riser, the factor is 1.5.

* * * * *

(4) The pressure determined by the operator to be the maximum safe pressure after considering and accounting for records of material properties, including material properties verified in accordance with § 192.607, if applicable, and the history of the pipeline segment, including known corrosion and actual operating pressure.

* * * * *

(e) Notwithstanding the requirements in paragraphs (a) through (d) of this section, operators of onshore steel transmission pipelines that meet the criteria specified in § 192.624(a) must establish and document the maximum allowable operating pressure in accordance with § 192.624.

(f) Operators of onshore steel transmission pipelines must make and retain records necessary to establish and document the MAOP of each pipeline segment in accordance with paragraphs (a) through (e) of this section as follows:

(1) Operators of pipelines in operation as of [July 1, 2020 must retain any existing records establishing MAOP for the life of the pipeline;

(2) Operators of pipelines in operation as of July 1, 2020 that do not have records establishing MAOP and are required to reconfirm MAOP in accordance with § 192.624, must retain the records reconfirming MAOP for the life of the pipeline; and

(3) Operators of pipelines placed in operation after July 1, 2020 must make and retain records establishing MAOP for the life of the pipeline.

■ 22. Section 192.624 is added to read as follows:

**§ 192.624 Maximum allowable operating pressure reconfirmation: Onshore steel transmission pipelines.**

(a) *Applicability.* Operators of onshore steel transmission pipeline segments must reconfirm the maximum allowable operating pressure (MAOP) of all pipeline segments in accordance with the requirements of this section if either of the following conditions are met:

(1) Records necessary to establish the MAOP in accordance with § 192.619(a), including records required by § 192.517(a), are not traceable, verifiable, and complete and the pipeline is located in one of the following locations:

(i) A high consequence area as defined in § 192.903; or

(ii) A Class 3 or Class 4 location.

(2) The pipeline segment's MAOP was established in accordance with § 192.619(c), the pipeline segment's MAOP is greater than or equal to 30 percent of the specified minimum yield strength, and the pipeline segment is located in one of the following areas:

(i) A high consequence area as defined in § 192.903;

(ii) A Class 3 or Class 4 location; or

(iii) A moderate consequence area as defined in § 192.3, if the pipeline segment can accommodate inspection by means of instrumented inline inspection tools.

(b) *Procedures and completion dates.* Operators of a pipeline subject to this section must develop and document procedures for completing all actions required by this section by July 1, 2021. These procedures must include a process for reconfirming MAOP for any pipelines that meet a condition of § 192.624(a), and for performing a spike test or material verification in accordance with §§ 192.506 and 192.607, if applicable. All actions required by this section must be completed according to the following schedule:

(1) Operators must complete all actions required by this section on at least 50% of the pipeline mileage by July 3, 2028.

(2) Operators must complete all actions required by this section on 100% of the pipeline mileage by July 2, 2035 or as soon as practicable, but not to exceed 4 years after the pipeline segment first meets a condition of § 192.624(a) (*e.g.,* due to a location becoming a high consequence area), whichever is later.

(3) If operational and environmental constraints limit an operator from meeting the deadlines in § 192.624, the operator may petition for an extension of the completion deadlines by up to 1 year, upon submittal of a notification in accordance with § 192.18. The notification must include an up-to-date plan for completing all actions in accordance with this section, the reason for the requested extension, current status, proposed completion date, outstanding remediation activities, and

any needed temporary measures needed to mitigate the impact on safety.

(c) *Maximum allowable operating pressure determination.* Operators of a pipeline segment meeting a condition in paragraph (a) of this section must reconfirm its MAOP using one of the following methods:

(1) *Method 1: Pressure test.* Perform a pressure test and verify material properties records in accordance with § 192.607 and the following requirements:

(i) *Pressure test.* Perform a pressure test in accordance with subpart J of this part. The MAOP must be equal to the test pressure divided by the greater of either 1.25 or the applicable class location factor in § 192.619(a)(2)(ii).

(ii) *Material properties records.* Determine if the following material properties records are documented in traceable, verifiable, and complete records: Diameter, wall thickness, seam type, and grade (minimum yield strength, ultimate tensile strength).

(iii) *Material properties verification.* If any of the records required by paragraph (c)(1)(ii) of this section are not documented in traceable, verifiable, and complete records, the operator must obtain the missing records in accordance with § 192.607. An operator must test the pipe materials cut out from the test manifold sites at the time the pressure test is conducted. If there is a failure during the pressure test, the operator must test any removed pipe from the pressure test failure in accordance with § 192.607.

(2) *Method 2: Pressure Reduction.* Reduce pressure, as necessary, and limit MAOP to no greater than the highest actual operating pressure sustained by the pipeline during the 5 years preceding October 1, 2019, divided by the greater of 1.25 or the applicable class location factor in § 192.619(a)(2)(ii). The highest actual sustained pressure must have been reached for a minimum cumulative duration of 8 hours during a continuous 30-day period. The value used as the highest actual sustained operating pressure must account for differences between upstream and downstream pressure on the pipeline by use of either the lowest maximum pressure value for the entire pipeline segment or using the operating pressure gradient along the entire pipeline segment (*i.e.,* the location-specific operating pressure at each location).

(i) Where the pipeline segment has had a class location change in accordance with § 192.611, and records documenting diameter, wall thickness, seam type, grade (minimum yield strength and ultimate tensile strength), and pressure tests are not documented in traceable, verifiable, and complete records, the operator must reduce the pipeline segment MAOP as follows:

(A) For pipeline segments where a class location changed from Class 1 to Class 2, from Class 2 to Class 3, or from Class 3 to Class 4, reduce the pipeline MAOP to no greater than the highest actual operating pressure sustained by the pipeline during the 5 years preceding October 1, 2019, divided by 1.39 for Class 1 to Class 2, 1.67 for Class 2 to Class 3, and 2.00 for Class 3 to Class 4.

(B) For pipeline segments where a class location changed from Class 1 to Class 3, reduce the pipeline MAOP to no greater than the highest actual operating pressure sustained by the pipeline during the 5 years preceding October 1, 2019, divided by 2.00.

(ii) Future uprating of the pipeline segment in accordance with subpart K is allowed if the MAOP is established using Method 2.

(iii) If an operator elects to use Method 2, but desires to use a less conservative pressure reduction factor or longer look-back period, the operator must notify PHMSA in accordance with § 192.18 no later than 7 calendar days after establishing the reduced MAOP. The notification must include the following details:

(A) Descriptions of the operational constraints, special circumstances, or other factors that preclude, or make it impractical, to use the pressure reduction factor specified in § 192.624(c)(2);

(B) The fracture mechanics modeling for failure stress pressures and cyclic fatigue crack growth analysis that complies with § 192.712;

(C) Justification that establishing MAOP by another method allowed by this section is impractical;

(D) Justification that the reduced MAOP determined by the operator is safe based on analysis of the condition of the pipeline segment, including material properties records, material properties verified in accordance § 192.607, and the history of the pipeline segment, particularly known corrosion and leakage, and the actual operating pressure, and additional compensatory preventive and mitigative measures taken or planned; and

(E) Planned duration for operating at the requested MAOP, long-term remediation measures and justification of this operating time interval, including fracture mechanics modeling for failure stress pressures and cyclic fatigue growth analysis and other validated forms of engineering analysis that have been reviewed and confirmed by subject matter experts.

(3) *Method 3: Engineering Critical Assessment (ECA).* Conduct an ECA in accordance with § 192.632.

(4) *Method 4: Pipe Replacement.* Replace the pipeline segment in accordance with this part.

(5) *Method 5: Pressure Reduction for Pipeline Segments with Small Potential Impact Radius.* Pipelines with a potential impact radius (PIR) less than or equal to 150 feet may establish the MAOP as follows:

(i) Reduce the MAOP to no greater than the highest actual operating pressure sustained by the pipeline during 5 years preceding October 1, 2019, divided by 1.1. The highest actual sustained pressure must have been reached for a minimum cumulative duration of 8 hours during one continuous 30-day period. The reduced MAOP must account for differences between discharge and upstream pressure on the pipeline by use of either the lowest value for the entire pipeline segment or the operating pressure gradient (*i.e.,* the location specific operating pressure at each location);

(ii) Conduct patrols in accordance with § 192.705 paragraphs (a) and (c) and conduct instrumented leakage surveys in accordance with § 192.706 at intervals not to exceed those in the following table 1 to § 192.624(c)(5)(ii):

TABLE 1 TO § 192.624(c)(5)(ii)

| Class locations | Patrols | Leakage surveys |
|---|---|---|
| (A) Class 1 and Class 2 ..... | 3½ months, but at least four times each calendar year | 3½ months, but at least four times each calendar year. |
| (B) Class 3 and Class 4 ..... | 3 months, but at least six times each calendar year ..... | 3 months, but at least six times each calendar year. |

(iii) Under Method 5, future uprating of the pipeline segment in accordance with subpart K is allowed.

(6) *Method 6: Alternative Technology.* Operators may use an alternative technical evaluation process that provides a documented engineering analysis for establishing MAOP. If an operator elects to use alternative technology, the operator must notify PHMSA in advance in accordance with § 192.18. The notification must include descriptions of the following details:

(i) The technology or technologies to be used for tests, examinations, and assessments; the method for establishing material properties; and analytical techniques with similar analysis from prior tool runs done to ensure the results are consistent with the required corresponding hydrostatic test pressure for the pipeline segment being evaluated;

(ii) Procedures and processes to conduct tests, examinations, assessments and evaluations, analyze defects and flaws, and remediate defects discovered;

(iii) Pipeline segment data, including original design, maintenance and operating history, anomaly or flaw characterization;

(iv) Assessment techniques and acceptance criteria, including anomaly detection confidence level, probability of detection, and uncertainty of the predicted failure pressure quantified as a fraction of specified minimum yield strength;

(v) If any pipeline segment contains cracking or may be susceptible to cracking or crack-like defects found through or identified by assessments, leaks, failures, manufacturing vintage histories, or any other available information about the pipeline, the operator must estimate the remaining life of the pipeline in accordance with paragraph § 192.712;

(vi) Operational monitoring procedures;

(vii) Methodology and criteria used to justify and establish the MAOP; and

(vii) Documentation of the operator's process and procedures used to implement the use of the alternative technology, including any records generated through its use.

(d) *Records.* An operator must retain records of investigations, tests, analyses, assessments, repairs, replacements, alterations, and other actions taken in accordance with the requirements of this section for the life of the pipeline.

■ 23. Section 192.632 is added to read as follows:

**§ 192.632 Engineering Critical Assessment for Maximum Allowable Operating Pressure Reconfirmation: Onshore steel transmission pipelines.**

When an operator conducts an MAOP reconfirmation in accordance with § 192.624(c)(3) ''Method 3'' using an ECA to establish the material strength and MAOP of the pipeline segment, the ECA must comply with the requirements of this section. The ECA must assess: Threats; loadings and operational circumstances relevant to those threats, including along the pipeline right-of way; outcomes of the threat assessment; relevant mechanical and fracture properties; in-service degradation or failure processes; and initial and final defect size relevance. The ECA must quantify the interacting effects of threats on any defect in the pipeline.

(a) *ECA Analysis.* (1) The material properties required to perform an ECA analysis in accordance with this paragraph are as follows: Diameter, wall thickness, seam type, grade (minimum yield strength and ultimate tensile strength), and Charpy v-notch toughness values based upon the lowest operational temperatures, if applicable. If any material properties required to perform an ECA for any pipeline segment in accordance with this paragraph are not documented in traceable, verifiable and complete records, an operator must use conservative assumptions and include the pipeline segment in its program to verify the undocumented information in accordance with § 192.607. The ECA must integrate, analyze, and account for the material properties, the results of all tests, direct examinations, destructive tests, and assessments performed in accordance with this section, along with other pertinent information related to pipeline integrity, including close interval surveys, coating surveys, interference surveys required by subpart I of this part, cause analyses of prior incidents, prior pressure test leaks and failures, other leaks, pipe inspections, and prior integrity assessments, including those required by §§ 192.617, 192.710, and subpart O of this part.

(2) The ECA must analyze and determine the predicted failure pressure for the defect being assessed using procedures that implement the appropriate failure criteria and justification as follows:

(i) The ECA must analyze any cracks or crack-like defects remaining in the pipe, or that could remain in the pipe, to determine the predicted failure pressure of each defect in accordance with § 192.712.

(ii) The ECA must analyze any metal loss defects not associated with a dent, including corrosion, gouges, scrapes or other metal loss defects that could remain in the pipe, to determine the predicted failure pressure. ASME/ANSI B31G (incorporated by reference, *see* § 192.7) or R–STRENG (incorporated by reference, *see* § 192.7) must be used for corrosion defects. Both procedures and their analysis apply to corroded regions that do not penetrate the pipe wall over 80 percent of the wall thickness and are subject to the limitations prescribed in the equations' procedures. The ECA must use conservative assumptions for metal loss dimensions (length, width, and depth).

(iii) When determining the predicted failure pressure for gouges, scrapes, selective seam weld corrosion, crack-related defects, or any defect within a dent, appropriate failure criteria and justification of the criteria must be used and documented.

(iv) If SMYS or actual material yield and ultimate tensile strength is not known or not documented by traceable, verifiable, and complete records, then the operator must assume 30,000 p.s.i. or determine the material properties using § 192.607.

(3) The ECA must analyze the interaction of defects to conservatively determine the most limiting predicted failure pressure. Examples include, but are not limited to, cracks in or near locations with corrosion metal loss, dents with gouges or other metal loss, or cracks in or near dents or other deformation damage. The ECA must document all evaluations and any assumptions used in the ECA process.

(4) The MAOP must be established at the lowest predicted failure pressure for any known or postulated defect, or interacting defects, remaining in the pipe divided by the greater of 1.25 or the applicable factor listed in § 192.619(a)(2)(ii).

(b) *Assessment to determine defects remaining in the pipe.* An operator must utilize previous pressure tests or develop and implement an assessment program to determine the size of defects remaining in the pipe to be analyzed in accordance with paragraph (a) of this section.

(1) An operator may use a previous pressure test that complied with subpart J to determine the defects remaining in the pipe if records for a pressure test meeting the requirements of subpart J of this part exist for the pipeline segment. The operator must calculate the largest defect that could have survived the pressure test. The operator must predict how much the defects have grown since the date of the pressure test in

accordance with § 192.712. The ECA must analyze the predicted size of the largest defect that could have survived the pressure test that could remain in the pipe at the time the ECA is performed. The operator must calculate the remaining life of the most severe defects that could have survived the pressure test and establish a re-assessment interval in accordance with the methodology in § 192.712.

(2) Operators may use an inline inspection program in accordance with paragraph (c) of this section.

(3) Operators may use ''other technology'' if it is validated by a subject matter expert to produce an equivalent understanding of the condition of the pipe equal to or greater than pressure testing or an inline inspection program. If an operator elects to use ''other technology'' in the ECA, it must notify PHMSA in advance of using the other technology in accordance with § 192.18. The ''other technology'' notification must have:

(i) Descriptions of the technology or technologies to be used for all tests, examinations, and assessments, including characterization of defect size used in the crack assessments (length, depth, and volumetric); and

(ii) Procedures and processes to conduct tests, examinations, assessments and evaluations, analyze defects, and remediate defects discovered.

(c) *In-line inspection.* An inline inspection (ILI) program to determine the defects remaining the pipe for the ECA analysis must be performed using tools that can detect wall loss, deformation from dents, wrinkle bends, ovalities, expansion, seam defects, including cracking and selective seam weld corrosion, longitudinal, circumferential and girth weld cracks, hard spot cracking, and stress corrosion cracking.

(1) If a pipeline has segments that might be susceptible to hard spots based on assessment, leak, failure, manufacturing vintage history, or other information, then the ILI program must include a tool that can detect hard spots.

(2) If the pipeline has had a reportable incident, as defined in § 191.3, attributed to a girth weld failure since its most recent pressure test, then the ILI program must include a tool that can detect girth weld defects unless the ECA analysis performed in accordance with this section includes an engineering evaluation program to analyze and account for the susceptibility of girth weld failure due to lateral stresses.

(3) Inline inspection must be performed in accordance with § 192.493.

(4) An operator must use unity plots or equivalent methodologies to validate the performance of the ILI tools in identifying and sizing actionable manufacturing and construction related anomalies. Enough data points must be used to validate tool performance at the same or better statistical confidence level provided in the tool specifications. The operator must have a process for identifying defects outside the tool performance specifications and following up with the ILI vendor to conduct additional in-field examinations, reanalyze ILI data, or both.

(5) Interpretation and evaluation of assessment results must meet the requirements of §§ 192.710, 192.713, and subpart O of this part, and must conservatively account for the accuracy and reliability of ILI, in-the-ditch examination methods and tools, and any other assessment and examination results used to determine the actual sizes of cracks, metal loss, deformation and other defect dimensions by applying the most conservative limit of the tool tolerance specification. ILI and in-the-ditch examination tools and procedures for crack assessments (length and depth) must have performance and evaluation standards confirmed for accuracy through confirmation tests for the defect types and pipe material vintage being evaluated. Inaccuracies must be accounted for in the procedures for evaluations and fracture mechanics models for predicted failure pressure determinations.

(6) Anomalies detected by ILI assessments must be remediated in accordance with applicable criteria in §§ 192.713 and 192.933.

(d) *Defect remaining life.* If any pipeline segment contains cracking or may be susceptible to cracking or crack-like defects found through or identified by assessments, leaks, failures, manufacturing vintage histories, or any other available information about the pipeline, the operator must estimate the remaining life of the pipeline in accordance with § 192.712.

(e) *Records.* An operator must retain records of investigations, tests, analyses, assessments, repairs, replacements, alterations, and other actions taken in accordance with the requirements of this section for the life of the pipeline.

■ 24. Section 192.710 is added to read as follows:

**§ 192.710 Transmission lines: Assessments outside of high consequence areas.**

(a) *Applicability:* This section applies to onshore steel transmission pipeline segments with a maximum allowable operating pressure of greater than or equal to 30% of the specified minimum yield strength and are located in:

(1) A Class 3 or Class 4 location; or

(2) A moderate consequence area as defined in § 192.3, if the pipeline segment can accommodate inspection by means of an instrumented inline inspection tool (*i.e.,* ''smart pig'').

(3) This section does not apply to a pipeline segment located in a high consequence area as defined in § 192.903.

(b) *General*—(1) *Initial assessment.* An operator must perform initial assessments in accordance with this section based on a risk-based prioritization schedule and complete initial assessment for all applicable pipeline segments no later than July 3, 2034, or as soon as practicable but not to exceed 10 years after the pipeline segment first meets the conditions of § 192.710(a) (*e.g.,* due to a change in class location or the area becomes a moderate consequence area), whichever is later.

(2) *Periodic reassessment.* An operator must perform periodic reassessments at least once every 10 years, with intervals not to exceed 126 months, or a shorter reassessment interval based upon the type of anomaly, operational, material, and environmental conditions found on the pipeline segment, or as necessary to ensure public safety.

(3) *Prior assessment.* An operator may use a prior assessment conducted before July 1, 2020 as an initial assessment for the pipeline segment, if the assessment met the subpart O requirements of part 192 for in-line inspection at the time of the assessment. If an operator uses this prior assessment as its initial assessment, the operator must reassess the pipeline segment according to the reassessment interval specified in paragraph (b)(2) of this section calculated from the date of the prior assessment.

(4) *MAOP verification.* An integrity assessment conducted in accordance with the requirements of § 192.624(c) for establishing MAOP may be used as an initial assessment or reassessment under this section.

(c) *Assessment method.* The initial assessments and the reassessments required by paragraph (b) of this section must be capable of identifying anomalies and defects associated with each of the threats to which the pipeline segment is susceptible and must be performed using one or more of the following methods:

(1) *Internal inspection.* Internal inspection tool or tools capable of detecting those threats to which the

pipeline is susceptible, such as corrosion, deformation and mechanical damage (*e.g.,* dents, gouges and grooves), material cracking and crack-like defects (*e.g.,* stress corrosion cracking, selective seam weld corrosion, environmentally assisted cracking, and girth weld cracks), hard spots with cracking, and any other threats to which the covered segment is susceptible. When performing an assessment using an in-line inspection tool, an operator must comply with § 192.493;

(2) *Pressure test.* Pressure test conducted in accordance with subpart J of this part. The use of subpart J pressure testing is appropriate for threats such as internal corrosion, external corrosion, and other environmentally assisted corrosion mechanisms; manufacturing and related defect threats, including defective pipe and pipe seams; and stress corrosion cracking, selective seam weld corrosion, dents and other forms of mechanical damage;

(3) *Spike hydrostatic pressure test.* A spike hydrostatic pressure test conducted in accordance with § 192.506. A spike hydrostatic pressure test is appropriate for time-dependent threats such as stress corrosion cracking; selective seam weld corrosion; manufacturing and related defects, including defective pipe and pipe seams; and other forms of defect or damage involving cracks or crack-like defects;

(4) *Direct examination.* Excavation and *in situ* direct examination by means of visual examination, direct measurement, and recorded non-destructive examination results and data needed to assess all applicable threats. Based upon the threat assessed, examples of appropriate non-destructive examination methods include ultrasonic testing (UT), phased array ultrasonic testing (PAUT), Inverse Wave Field Extrapolation (IWEX), radiography, and magnetic particle inspection (MPI);

(5) *Guided Wave Ultrasonic Testing.* Guided Wave Ultrasonic Testing (GWUT) as described in Appendix F;

(6) *Direct assessment.* Direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. The use of use of direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking is allowed only if appropriate for the threat and pipeline segment being assessed. Use of direct assessment for threats other than the threat for which the direct assessment method is suitable is not allowed. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with the applicable requirements specified in §§ 192.925, 192.927 and 192.929; or

(7) *Other technology.* Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe for each of the threats to which the pipeline is susceptible. An operator must notify PHMSA in advance of using the other technology in accordance with § 192.18.

(d) *Data analysis.* An operator must analyze and account for the data obtained from an assessment performed under paragraph (c) of this section to determine if a condition could adversely affect the safe operation of the pipeline using personnel qualified by knowledge, training, and experience. In addition, when analyzing inline inspection data, an operator must account for uncertainties in reported results (*e.g.,* tool tolerance, detection threshold, probability of detection, probability of identification, sizing accuracy, conservative anomaly interaction criteria, location accuracy, anomaly findings, and unity chart plots or equivalent for determining uncertainties and verifying actual tool performance) in identifying and characterizing anomalies.

(e) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about a condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that 180 days is impracticable.

(f) *Remediation.* An operator must comply with the requirements in §§ 192.485, 192.711, and 192.713, where applicable, if a condition that could adversely affect the safe operation of a pipeline is discovered.

(g) *Analysis of information.* An operator must analyze and account for all available relevant information about a pipeline in complying with the requirements in paragraphs (a) through (f) of this section.

■ 25. Section 192.712 is added to read as follows:

**§ 192.712 Analysis of predicted failure pressure.**

(a) *Applicability.* Whenever required by this part, operators of onshore steel transmission pipelines must analyze anomalies or defects to determine the predicted failure pressure at the location of the anomaly or defect, and the remaining life of the pipeline segment at the location of the anomaly or defect, in accordance with this section.

(b) *Corrosion metal loss.* When analyzing corrosion metal loss under this section, an operator must use a suitable remaining strength calculation method including, ASME/ANSI B31G (incorporated by reference, *see* § 192.7); R–STRENG (incorporated by reference, *see* § 192.7); or an alternative equivalent method of remaining strength calculation that will provide an equally conservative result.

(c) [Reserved]

(d) *Cracks and crack-like defects*—(1) *Crack analysis models.* When analyzing cracks and crack-like defects under this section, an operator must determine predicted failure pressure, failure stress pressure, and crack growth using a technically proven fracture mechanics model appropriate to the failure mode (ductile, brittle or both), material properties (pipe and weld properties), and boundary condition used (pressure test, ILI, or other).

(2) *Analysis for crack growth and remaining life.* If the pipeline segment is susceptible to cyclic fatigue or other loading conditions that could lead to fatigue crack growth, fatigue analysis must be performed using an applicable fatigue crack growth law (for example, Paris Law) or other technically appropriate engineering methodology. For other degradation processes that can cause crack growth, appropriate engineering analysis must be used. The above methodologies must be validated by a subject matter expert to determine conservative predictions of flaw growth and remaining life at the maximum allowable operating pressure. The operator must calculate the remaining life of the pipeline by determining the amount of time required for the crack to grow to a size that would fail at maximum allowable operating pressure.

(i) When calculating crack size that would fail at MAOP, and the material toughness is not documented in traceable, verifiable, and complete records, the same Charpy v-notch toughness value established in paragraph (e)(2) of this section must be used.

(ii) Initial and final flaw size must be determined using a fracture mechanics model appropriate to the failure mode (ductile, brittle or both) and boundary condition used (pressure test, ILI, or other).

(iii) An operator must re-evaluate the remaining life of the pipeline before 50% of the remaining life calculated by this analysis has expired. The operator must determine and document if further pressure tests or use of other assessment

methods are required at that time. The operator must continue to re-evaluate the remaining life of the pipeline before 50% of the remaining life calculated in the most recent evaluation has expired.

(3) *Cracks that survive pressure testing.* For cases in which the operator does not have in-line inspection crack anomaly data and is analyzing potential crack defects that could have survived a pressure test, the operator must calculate the largest potential crack defect sizes using the methods in paragraph (d)(1) of this section. If pipe material toughness is not documented in traceable, verifiable, and complete records, the operator must use one of the following for Charpy v-notch toughness values based upon minimum operational temperature and equivalent to a full-size specimen value:

(i) Charpy v-notch toughness values from comparable pipe with known properties of the same vintage and from the same steel and pipe manufacturer;

(ii) A conservative Charpy v-notch toughness value to determine the toughness based upon the material properties verification process specified in § 192.607;

(iii) A full size equivalent Charpy v-notch upper-shelf toughness level of 120 ft.-lbs.; or

(iv) Other appropriate values that an operator demonstrates can provide conservative Charpy v-notch toughness values of the crack-related conditions of the pipeline segment. Operators using an assumed Charpy v-notch toughness value must notify PHMSA in accordance with § 192.18.

(e) *Data.* In performing the analyses of predicted or assumed anomalies or defects in accordance with this section, an operator must use data as follows.

(1) An operator must explicitly analyze and account for uncertainties in reported assessment results (including tool tolerance, detection threshold, probability of detection, probability of identification, sizing accuracy, conservative anomaly interaction criteria, location accuracy, anomaly findings, and unity chart plots or equivalent for determining uncertainties and verifying tool performance) in identifying and characterizing the type and dimensions of anomalies or defects used in the analyses, unless the defect dimensions have been verified using *in situ* direct measurements.

(2) The analyses performed in accordance with this section must utilize pipe and material properties that are documented in traceable, verifiable, and complete records. If documented data required for any analysis is not available, an operator must obtain the undocumented data through § 192.607. Until documented material properties are available, the operator shall use conservative assumptions as follows:

(i) *Material toughness.* An operator must use one of the following for material toughness:

(A) Charpy v-notch toughness values from comparable pipe with known properties of the same vintage and from the same steel and pipe manufacturer;

(B) A conservative Charpy v-notch toughness value to determine the toughness based upon the ongoing material properties verification process specified in § 192.607;

(C) If the pipeline segment does not have a history of reportable incidents caused by cracking or crack-like defects, maximum Charpy v-notch toughness values of 13.0 ft.-lbs. for body cracks and 4.0 ft.-lbs. for cold weld, lack of fusion, and selective seam weld corrosion defects;

(D) If the pipeline segment has a history of reportable incidents caused by cracking or crack-like defects, maximum Charpy v-notch toughness values of 5.0 ft.-lbs. for body cracks and 1.0 ft.-lbs. for cold weld, lack of fusion, and selective seam weld corrosion; or

(E) Other appropriate values that an operator demonstrates can provide conservative Charpy v-notch toughness values of crack-related conditions of the pipeline segment. Operators using an assumed Charpy v-notch toughness value must notify PHMSA in advance in accordance with § 192.18 and include in the notification the bases for demonstrating that the Charpy v-notch toughness values proposed are appropriate and conservative for use in analysis of crack-related conditions.

(ii) *Material strength.* An operator must assume one of the following for material strength:

(A) Grade A pipe (30,000 psi), or

(B) The specified minimum yield strength that is the basis for the current maximum allowable operating pressure.

(iii) *Pipe dimensions and other data.* Until pipe wall thickness, diameter, or other data are determined and documented in accordance with § 192.607, the operator must use values upon which the current MAOP is based.

(f) *Review.* Analyses conducted in accordance with this section must be reviewed and confirmed by a subject matter expert.

(g) *Records.* An operator must keep for the life of the pipeline records of the investigations, analyses, and other actions taken in accordance with the requirements of this section. Records must document justifications, deviations, and determinations made for the following, as applicable:

(1) The technical approach used for the analysis;

(2) All data used and analyzed;

(3) Pipe and weld properties;

(4) Procedures used;

(5) Evaluation methodology used;

(6) Models used;

(7) Direct in situ examination data;

(8) In-line inspection tool run information evaluated, including any multiple in-line inspection tool runs;

(9) Pressure test data and results;

(10) In-the-ditch assessments;

(11) All measurement tool, assessment, and evaluation accuracy specifications and tolerances used in technical and operational results;

(12) All finite element analysis results;

(13) The number of pressure cycles to failure, the equivalent number of annual pressure cycles, and the pressure cycle counting method;

(14) The predicted fatigue life and predicted failure pressure from the required fatigue life models and fracture mechanics evaluation methods;

(15) Safety factors used for fatigue life and/or predicted failure pressure calculations;

(16) Reassessment time interval and safety factors;

(17) The date of the review;

(18) Confirmation of the results by qualified technical subject matter experts; and

(19) Approval by responsible operator management personnel.

■ 26. Section 192.750 is added to read as follows:

**§ 192.750 Launcher and receiver safety.**

Any launcher or receiver used after July 1, 2021, must be equipped with a device capable of safely relieving pressure in the barrel before removal or opening of the launcher or receiver barrel closure or flange and insertion or removal of in-line inspection tools, scrapers, or spheres. An operator must use a device to either: Indicate that pressure has been relieved in the barrel; or alternatively prevent opening of the barrel closure or flange when pressurized, or insertion or removal of in-line devices (*e.g.* inspection tools, scrapers, or spheres), if pressure has not been relieved.

■ 27. In § 192.805, paragraph (i) is revised to read as follows:

**§ 192.805 Qualification Program.**

* * * * *

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if an operator significantly modifies the program after the administrator or state agency has verified that it complies

with this section. Notifications to PHMSA must be submitted in accordance with § 192.18.

■ 28. In § 192.909, paragraph (b) is revised to read as follows:

**§ 192.909 How can an operator change its integrity management program?**

* * * * *

(b) *Notification.* An operator must notify OPS, in accordance with § 192.18, of any change to the program that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. An operator must provide notification within 30 days after adopting this type of change into its program.

■ 29. In § 192.917, paragraphs (a)(3) and (e)(2) through (4) are revised, and paragraph (e)(6) is added to read as follows:

**§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?**

(a) * * *

(3) Time independent threats such as third party damage, mechanical damage, incorrect operational procedure, weather related and outside force damage to include consideration of seismicity, geology, and soil stability of the area; and

* * * * *

(e) * * *

(2) *Cyclic fatigue.* An operator must analyze and account for whether cyclic fatigue or other loading conditions (including ground movement, and suspension bridge condition) could lead to a failure of a deformation, including a dent or gouge, crack, or other defect in the covered segment. The analysis must assume the presence of threats in the covered segment that could be exacerbated by cyclic fatigue. An operator must use the results from the analysis together with the criteria used to determine the significance of the threat(s) to the covered segment to prioritize the integrity baseline assessment or reassessment. Failure stress pressure and crack growth analysis of cracks and crack-like defects must be conducted in accordance with § 192.712. An operator must monitor operating pressure cycles and periodically, but at least every 7 calendar years, with intervals not to exceed 90 months, determine if the cyclic fatigue analysis remains valid or if the cyclic fatigue analysis must be revised based on changes to operating pressure cycles or other loading conditions.

(3) *Manufacturing and construction defects.* An operator must analyze the covered segment to determine and account for the risk of failure from manufacturing and construction defects (including seam defects) in the covered segment. The analysis must account for the results of prior assessments on the covered segment. An operator may consider manufacturing and construction related defects to be stable defects only if the covered segment has been subjected to hydrostatic pressure testing satisfying the criteria of subpart J of at least 1.25 times MAOP, and the covered segment has not experienced a reportable incident attributed to a manufacturing or construction defect since the date of the most recent subpart J pressure test. If any of the following changes occur in the covered segment, an operator must prioritize the covered segment as a high-risk segment for the baseline assessment or a subsequent reassessment.

(i) The pipeline segment has experienced a reportable incident, as defined in § 191.3, since its most recent successful subpart J pressure test, due to an original manufacturing-related defect, or a construction-, installation-, or fabrication-related defect;

(ii) MAOP increases; or

(iii) The stresses leading to cyclic fatigue increase.

(4) *Electric Resistance Welded (ERW) pipe.* If a covered pipeline segment contains low frequency ERW pipe, lap welded pipe, pipe with longitudinal joint factor less than 1.0 as defined in § 192.113, or other pipe that satisfies the conditions specified in ASME/ANSI B31.8S, Appendices A4.3 and A4.4, and any covered or non-covered segment in the pipeline system with such pipe has experienced seam failure (including seam cracking and selective seam weld corrosion), or operating pressure on the covered segment has increased over the maximum operating pressure experienced during the preceding 5 years (including abnormal operation as defined in § 192.605(c)), or MAOP has been increased, an operator must select an assessment technology or technologies with a proven application capable of assessing seam integrity and seam corrosion anomalies. The operator must prioritize the covered segment as a high-risk segment for the baseline assessment or a subsequent reassessment. Pipe with seam cracks must be evaluated using fracture mechanics modeling for failure stress pressures and cyclic fatigue crack growth analysis to estimate the remaining life of the pipe in accordance with § 192.712.

* * * * *

(6) *Cracks.* If an operator identifies any crack or crack-like defect (*e.g.,* stress corrosion cracking or other environmentally assisted cracking, seam defects, selective seam weld corrosion, girth weld cracks, hook cracks, and fatigue cracks) on a covered pipeline segment that could adversely affect the integrity of the pipeline, the operator must evaluate, and remediate, as necessary, all pipeline segments (both covered and non-covered) with similar characteristics associated with the crack or crack-like defect. Similar characteristics may include operating and maintenance histories, material properties, and environmental characteristics. An operator must establish a schedule for evaluating, and remediating, as necessary, the similar pipeline segments that is consistent with the operator's established operating and maintenance procedures under this part for testing and repair.

■ 30. In § 192.921, revise paragraph (a) and add paragraph (i) to read as follows:

**§ 192.921 How is the baseline assessment to be conducted?**

(a) *Assessment methods.* An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods for each threat to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the covered segment (*See* § 192.917).

(1) Internal inspection tool or tools capable of detecting those threats to which the pipeline is susceptible. The use of internal inspection tools is appropriate for threats such as corrosion, deformation and mechanical damage (including dents, gouges and grooves), material cracking and crack-like defects (*e.g.,* stress corrosion cracking, selective seam weld corrosion, environmentally assisted cracking, and girth weld cracks), hard spots with cracking, and any other threats to which the covered segment is susceptible. When performing an assessment using an in-line inspection tool, an operator must comply with § 192.493. In addition, an operator must analyze and account for uncertainties in reported results (*e.g.,* tool tolerance, detection threshold, probability of detection, probability of identification, sizing accuracy, conservative anomaly interaction criteria, location accuracy, anomaly findings, and unity chart plots or equivalent for determining uncertainties and verifying actual tool

performance) in identifying and characterizing anomalies;

(2) Pressure test conducted in accordance with subpart J of this part. The use of subpart J pressure testing is appropriate for threats such as internal corrosion; external corrosion and other environmentally assisted corrosion mechanisms; manufacturing and related defects threats, including defective pipe and pipe seams; stress corrosion cracking; selective seam weld corrosion; dents; and other forms of mechanical damage. An operator must use the test pressures specified in Table 3 of section 5 of ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7) to justify an extended reassessment interval in accordance with § 192.939.

(3) Spike hydrostatic pressure test conducted in accordance with § 192.506. The use of spike hydrostatic pressure testing is appropriate for time-dependent threats such as stress corrosion cracking; selective seam weld corrosion; manufacturing and related defects, including defective pipe and pipe seams; and other forms of defect or damage involving cracks or crack-like defects;

(4) Excavation and *in situ* direct examination by means of visual examination, direct measurement, and recorded non-destructive examination results and data needed to assess all threats. Based upon the threat assessed, examples of appropriate non-destructive examination methods include ultrasonic testing (UT), phased array ultrasonic testing (PAUT), inverse wave field extrapolation (IWEX), radiography, and magnetic particle inspection (MPI);

(5) Guided wave ultrasonic testing (GWUT) as described in Appendix F. The use of GWUT is appropriate for internal and external pipe wall loss;

(6) Direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. The use of direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking is allowed only if appropriate for the threat and the pipeline segment being assessed. Use of direct assessment for threats other than the threat for which the direct assessment method is suitable is not allowed. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with the applicable requirements specified in §§ 192.925, 192.927 and 192.929; or

(7) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe for each of the threats to which the pipeline is susceptible. An operator must notify PHMSA in advance of using the other technology in accordance with § 192.18.

* * * * *

(i) *Baseline assessments for pipeline segments with a reconfirmed MAOP.* An integrity assessment conducted in accordance with the requirements of § 192.624(c) may be used as a baseline assessment under this section.

■ 31. In § 192.933, paragraphs (a)(1) and (2) are revised to read as follows:

**§ 192.933 What actions must be taken to address integrity issues?**

(a) * * *

(1) *Temporary pressure reduction.* If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. An operator must determine any temporary reduction in operating pressure required by this section using ASME/ANSI B31G (incorporated by reference, *see* § 192.7); R–STRENG (incorporated by reference, *see* § 192.7); or by reducing the operating pressure to a level not exceeding 80 percent of the level at the time the condition was discovered. An operator must notify PHMSA in accordance with § 192.18 if it cannot meet the schedule for evaluation and remediation required under paragraph (c) of this section and cannot provide safety through a temporary reduction in operating pressure or through another action.

(2) *Long-term pressure reduction.* When a pressure reduction exceeds 365 days, an operator must notify PHMSA under § 192.18 and explain the reasons for the remediation delay. This notice must include a technical justification that the continued pressure reduction will not jeopardize the integrity of the pipeline.

* * * * *

■ 32. In § 192.935, paragraph (b)(2) is revised to read as follows:

**§ 192.935 What additional preventive and mitigative measures must an operator take?**

* * * * *

(b) * * *

(2) *Outside force damage.* If an operator determines that outside force (*e.g.,* earth movement, loading, longitudinal, or lateral forces, seismicity of the area, floods, unstable suspension bridge) is a threat to the integrity of a covered segment, the operator must take measures to minimize the consequences to the covered segment from outside force damage. These measures include increasing the frequency of aerial, foot or other methods of patrols; adding external protection; reducing external stress; relocating the line; or inline inspections with geospatial and deformation tools.

* * * * *

■ 33. In § 192.937, revise paragraph (c) and add paragraph (d) to read as follows:

**§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?**

* * * * *

(c) *Assessment methods.* In conducting the integrity reassessment, an operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods for each threat to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified on the covered segment (*see* § 192.917).

(1) *Internal inspection tools.* When performing an assessment using an in-line inspection tool, an operator must comply with the following requirements:

(i) Perform the in-line inspection in accordance with § 192.493;

(ii) Select a tool or combination of tools capable of detecting the threats to which the pipeline segment is susceptible such as corrosion, deformation and mechanical damage (*e.g.* dents, gouges and grooves), material cracking and crack-like defects (*e.g.* stress corrosion cracking, selective seam weld corrosion, environmentally assisted cracking, and girth weld cracks), hard spots with cracking, and any other threats to which the covered segment is susceptible; and

(iii) Analyze and account for uncertainties in reported results (*e.g.,* tool tolerance, detection threshold, probability of detection, probability of identification, sizing accuracy, conservative anomaly interaction criteria, location accuracy, anomaly findings, and unity chart plots or equivalent for determining uncertainties and verifying actual tool performance) in identifying and characterizing anomalies.

(2) *Pressure test conducted in accordance with subpart J of this part.* The use of pressure testing is appropriate for threats such as: Internal corrosion; external corrosion and other environmentally assisted corrosion mechanisms; manufacturing and related defects threats, including defective pipe and pipe seams; stress corrosion cracking; selective seam weld corrosion; dents; and other forms of mechanical damage. An operator must use the test

pressures specified in table 3 of section 5 of ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7) to justify an extended reassessment interval in accordance with § 192.939.

(3) *Spike hydrostatic pressure test in accordance with § 192.506.* The use of spike hydrostatic pressure testing is appropriate for time-dependent threats such as: Stress corrosion cracking; selective seam weld corrosion; manufacturing and related defects, including defective pipe and pipe seams; and other forms of defect or damage involving cracks or crack-like defects;

(4) Excavation and *in situ* direct examination by means of visual examination, direct measurement, and recorded non-destructive examination results and data needed to assess all threats. Based upon the threat assessed, examples of appropriate non-destructive examination methods include ultrasonic testing (UT), phased array ultrasonic testing (PAUT), inverse wave field extrapolation (IWEX), radiography, or magnetic particle inspection (MPI);

(5) Guided wave ultrasonic testing (GWUT) as described in Appendix F. The use of GWUT is appropriate for internal and external pipe wall loss;

(6) Direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. The use of direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking is allowed only if appropriate for the threat and pipeline segment being assessed. Use of direct assessment for threats other than the threat for which the direct assessment method is suitable is not allowed. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with the applicable requirements specified in §§ 192.925, 192.927, and 192.929;

(7) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe for each of the threats to which the pipeline is susceptible. An operator must notify PHMSA in advance of using the other technology in accordance with § 192.18; or

(8) Confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than 7 calendar years. An operator using this reassessment method must comply with § 192.931.

(d) *MAOP reconfirmation assessments.* An integrity assessment conducted in accordance with the requirements of § 192.624(c) may be used as a reassessment under this section.

■ 34. In § 192.939, paragraphs (a) introductory text, (b) introductory text, and (b)(1) are revised to read as follows:

**§ 192.939 What are the required reassessment intervals?**

* * * * *

(a) *Pipelines operating at or above 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating at or above 30% SMYS in accordance with the requirements of this section. The maximum reassessment interval by an allowable reassessment method is 7 calendar years. Operators may request a 6-month extension of the 7-calendar-year reassessment interval if the operator submits written notice to OPS, in accordance with § 192.18, with sufficient justification of the need for the extension. If an operator establishes a reassessment interval that is greater than 7 calendar years, the operator must, within the 7-calendar-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment carried out using confirmatory direct assessment must be done in accordance with § 192.931. The table that follows this section sets forth the maximum allowed reassessment intervals.

* * * * *

(b) *Pipelines Operating below 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating below 30% SMYS in accordance with the requirements of this section. The maximum reassessment interval by an allowable reassessment method is 7 calendar years. Operators may request a 6-month extension of the 7-calendar-year reassessment interval if the operator submits written notice to OPS in accordance with § 192.18. The notice must include sufficient justification of the need for the extension. An operator must establish reassessment by at least one of the following—

(1) Reassessment by pressure test, internal inspection or other equivalent technology following the requirements in paragraph (a)(1) of this section except that the stress level referenced in paragraph (a)(1)(ii) of this section would be adjusted to reflect the lower operating stress level. If an established interval is more than 7 calendar years, an operator must conduct by the seventh calendar year of the interval either a confirmatory direct assessment in accordance with § 192.931, or a low stress reassessment in accordance with § 192.941.

* * * * *

**§ 192.949 [Removed and Reserved]**

■ 35. Remove and reserve § 192.949.

■ 36. Appendix F is added to read as follows:

**Appendix F to Part 192–Criteria for Conducting Integrity Assessments Using Guided Wave Ultrasonic Testing (GWUT)**

This appendix defines criteria which must be properly implemented for use of guided wave ultrasonic testing (GWUT) as an integrity assessment method. Any application of GWUT that does not conform to these criteria is considered ''other technology'' as described by §§ 192.710(c)(7), 192.921(a)(7), and 192.937(c)(7), for which OPS must be notified 90 days prior to use in accordance with §§ 192.921(a)(7) or 192.937(c)(7). GWUT in the ''Go-No Go'' mode means that all indications (wall loss anomalies) above the testing threshold (a maximum of 5% of cross sectional area (CSA) sensitivity) be directly examined, in-line tool inspected, pressure tested, or replaced prior to completing the integrity assessment on the carrier pipe.

I. *Equipment and Software: Generation.* The equipment and the computer software used are critical to the success of the inspection. Computer software for the inspection equipment must be reviewed and updated, as required, on an annual basis, with intervals not to exceed 15 months, to support sensors, enhance functionality, and resolve any technical or operational issues identified.

II. *Inspection Range.* The inspection range and sensitivity are set by the signal to noise (S/N) ratio but must still keep the maximum threshold sensitivity at 5% cross sectional area (CSA). A signal that has an amplitude that is at least twice the noise level can be reliably interpreted. The greater the S/N ratio the easier it is to identify and interpret signals from small changes. The signal to noise ratio is dependent on several variables such as surface roughness, coating, coating condition, associated pipe fittings (T's, elbows, flanges), soil compaction, and environment. Each of these affects the propagation of sound waves and influences the range of the test. It may be necessary to inspect from both ends of the pipeline segment to achieve a full inspection. In general, the inspection range can approach 60 to 100 feet for a 5% CSA, depending on field conditions.

III. *Complete Pipe Inspection.* To ensure that the entire pipeline segment is assessed there should be at least a 2 to 1 signal to noise ratio across the entire pipeline segment that is

inspected. This may require multiple GWUT shots. Double-ended inspections are expected. These two inspections are to be overlaid to show the minimum 2 to 1 S/N ratio is met in the middle. If possible, show the same near or midpoint feature from both sides and show an approximate 5% distance overlap.

IV. *Sensitivity.* The detection sensitivity threshold determines the ability to identify a cross sectional change. The maximum threshold sensitivity cannot be greater than 5% of the cross sectional area (CSA).

The locations and estimated CSA of all metal loss features in excess of the detection threshold must be determined and documented.

All defect indications in the ''Go-No Go'' mode above the 5% testing threshold must be directly examined, in-line inspected, pressure tested, or replaced prior to completing the integrity assessment.

V. *Wave Frequency.* Because a single wave frequency may not detect certain defects, a minimum of three frequencies must be run for each inspection to determine the best frequency for characterizing indications. The frequencies used for the inspections must be documented and must be in the range specified by the manufacturer of the equipment.

VI. *Signal or Wave Type: Torsional and Longitudinal.* Both torsional and longitudinal waves must be used and use must be documented.

VII. *Distance Amplitude Correction (DAC) Curve and Weld Calibration.* The distance amplitude correction curve accounts for coating, pipe diameter, pipe wall and environmental conditions at the assessment location. The DAC curve must be set for each inspection as part of establishing the effective range of a GWUT inspection. DAC curves provide a means for evaluating the cross-sectional area change of reflections at various distances in the test range by assessing signal to noise ratio. A DAC curve is a means of taking apparent attenuation into account along the time base of a test signal. It is a line of equal sensitivity along the trace which allows the amplitudes of signals at different axial distances from the collar to be compared.

VIII. *Dead Zone.* The dead zone is the area adjacent to the collar in which the transmitted signal blinds the received signal, making it impossible to obtain reliable results. Because the entire line must be inspected, inspection procedures must account for the dead zone by requiring the movement of the collar for additional inspections. An alternate method of obtaining valid readings in the dead zone is to use B-scan ultrasonic equipment and visual examination of the external surface. The length of the dead zone and the near field for each inspection must be documented.

IX. *Near Field Effects.* The near field is the region beyond the dead zone where the receiving amplifiers are increasing in power, before the wave is properly established. Because the entire line must be inspected, inspection procedures must account for the near field by requiring the movement of the collar for additional inspections. An alternate method of obtaining valid readings in the near field is to use B-scan ultrasonic equipment and visual examination of the external surface. The length of the dead zone and the near field for each inspection must be documented.

X. *Coating Type.* Coatings can have the effect of attenuating the signal. Their thickness and condition are the primary factors that affect the rate of signal attenuation. Due to their variability, coatings make it difficult to predict the effective inspection distance. Several coating types may affect the GWUT results to the point that they may reduce the expected inspection distance. For example, concrete coated pipe may be problematic when well bonded due to the attenuation effects. If an inspection is done and the required sensitivity is not achieved for the entire length of the pipe, then another type of assessment method must be utilized.

XI. *End Seal.* When assessing cased carrier pipe with GWUT, operators must remove the end seal from the casing at each GWUT test location to facilitate visual inspection. Operators must remove debris and water from the casing at the end seals. Any corrosion material observed must be removed, collected and reviewed by the operator's corrosion technician. The end seal does not interfere with the accuracy of the GWUT inspection but may have a dampening effect on the range.

XII. *Weld Calibration to set DAC Curve.* Accessible welds, along or outside the pipeline segment to be inspected, must be used to set the DAC curve. A weld or welds in the access hole (secondary area) may be used if welds along the pipeline segment are not accessible. In order to use these welds in the secondary area, sufficient distance must be allowed to account for the dead zone and near field. There must not be a weld between the transducer collar and the calibration weld. A conservative estimate of the predicted amplitude for the weld is 25% CSA (cross sectional area) and can be used if welds are not accessible. Calibrations (setting of the DAC curve) should be on pipe with similar properties such as wall thickness and coating. If the actual weld cap height is different from the assumed weld cap height, the estimated CSA may be inaccurate and adjustments to the DAC curve may be required. Alternative means of calibration can be used if justified by a documented engineering analysis and evaluation.

XIII. *Validation of Operator Training.* Pipeline operators must require all guided wave service providers to have equipment-specific training and experience for all GWUT Equipment Operators which includes training for:

A. Equipment operation,

B. field data collection, and

C. data interpretation on cased and buried pipe.

Only individuals who have been qualified by the manufacturer or an independently assessed evaluation procedure similar to ISO 9712 (Sections: 5 Responsibilities; 6 Levels of Qualification; 7 Eligibility; and 10 Certification), as specified above, may operate the equipment. A senior-level GWUT equipment operator with pipeline specific experience must provide onsite oversight of the inspection and approve the final reports. A senior-level GWUT equipment operator must have additional training and experience, including training specific to cased and buried pipe, with a quality control program which that conforms to Section 12 of ASME B31.8S (for availability, see § 192.7).

XIV. *Training and Experience Minimums for Senior Level GWUT Equipment Operators:*

- Equipment Manufacturer's minimum qualification for equipment operation and data collection with specific endorsements for casings and buried pipe
- Training, qualification and experience in testing procedures and frequency determination
- Training, qualification and experience in conversion of guided wave data into pipe features and estimated metal loss (estimated cross-sectional area loss and circumferential extent)
- Equipment Manufacturer's minimum qualification with specific endorsements for data interpretation of anomaly features for pipe within casings and buried pipe.

XV. *Equipment: Traceable from vendor to inspection company.* An operator must maintain documentation of the version of the GWUT software used and the serial number of the other

equipment such as collars, cables, etc., in the report.

XVI. *Calibration Onsite.* The GWUT equipment must be calibrated for performance in accordance with the manufacturer's requirements and specifications, including the frequency of calibrations. A diagnostic check and system check must be performed on-site each time the equipment is relocated to a different casing or pipeline segment. If on-site diagnostics show a discrepancy with the manufacturer's requirements and specifications, testing must cease until the equipment can be restored to manufacturer's specifications.

XVII. *Use on Shorted Casings (direct or electrolytic).* GWUT may not be used to assess shorted casings. GWUT operators must have operations and maintenance procedures (*see § 192.605*) to address the effect of shorted casings on the GWUT signal. The equipment operator must clear any evidence of interference, other than some slight dampening of the GWUT signal from the shorted casing, according to their operating and maintenance procedures. All shorted casings found while conducting GWUT inspections must be addressed by the operator's standard operating procedures.

XVIII. *Direct examination of all indications above the detection sensitivity threshold.* The use of GWUT in the ''Go-No Go'' mode requires that all indications (wall loss anomalies) above the testing threshold (5% of CSA sensitivity) be directly examined (or replaced) prior to completing the integrity assessment on the cased carrier pipe or other GWUT application. If this cannot be accomplished, then alternative methods of assessment (such as hydrostatic pressure tests or ILI) must be utilized.

XIV. *Timing of direct examination of all indications above the detection sensitivity threshold.* Operators must either replace or conduct direct examinations of all indications identified above the detection sensitivity threshold according to the table below. Operators must conduct leak surveys and reduce operating pressure as specified until the pipe is replaced or direct examinations are completed.

REQUIRED RESPONSE TO GWUT INDICATIONS

| GWUT criterion | Operating pressure less than or equal to 30% SMYS | Operating pressure over 30 and less than or equal to 50% SMYS | Operating pressure over 50% SMYS |
|---|---|---|---|
| Over the detection sensitivity threshold (maximum of 5% CSA). | Replace or direct examination within 12 months, and instrumented leak survey once every 30 calendar days. | Replace or direct examination within 6 months, instrumented leak survey once every 30 calendar days, and maintain MAOP below the operating pressure at time of discovery. | Replace or direct examination within 6 months, instrumented leak survey once every 30 calendar days, and reduce MAOP to 80% of operating pressure at time of discovery. |

Issued in Washington, DC, on September 16, 2019, under authority delegated in 49 CFR part 1.97.

**Howard R. Elliott,**

*Administrator.*

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Part III

## Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

Pipeline Safety: Safety of Hazardous Liquid Pipelines; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Part 195**

**[Docket No. PHMSA–2010–0229; Amdt. No. 195–102]**

**RIN 2137–AE66**

# Pipeline Safety: Safety of Hazardous Liquid Pipelines

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** In response to congressional mandates, NTSB and GAO recommendations, lessons learned, and public input, PHMSA is amending the Pipeline Safety Regulations to improve the safety of pipelines transporting hazardous liquids. Specifically, PHMSA is extending reporting requirements to certain hazardous liquid gravity and rural gathering lines; requiring the inspection of pipelines in areas affected by extreme weather and natural disasters; requiring integrity assessments at least once every 10 years of onshore hazardous liquid pipeline segments located outside of high consequence areas and that are ''piggable'' (*i.e.,* can accommodate in-line inspection devices); extending the required use of leak detection systems beyond high consequence areas to all regulated, non-gathering hazardous liquid pipelines; and requiring that all pipelines in or affecting high consequence areas be capable of accommodating in-line inspection tools within 20 years, unless the basic construction of a pipeline cannot be modified to permit that accommodation. Additionally, PHMSA is clarifying other regulations and is incorporating Sections 14 and 25 of the PIPES Act of 2016 to improve regulatory certainty and compliance.

**DATES:** The effective date of this final rule is July 1, 2020. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of March 24, 2017 and March 6, 2015.

**FOR FURTHER INFORMATION CONTACT:**

*Technical questions:* Steve Nanney, Project Manager, by telephone at 713–272–2855.

*General information:* Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361.

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## I. Executive Summary

### *A. Purpose of the Regulatory Action*

In recent years, there have been significant hazardous liquid pipeline accidents, most notably the 2010 crude oil spill near Marshall, MI, during which at least 843,000 gallons of crude oil were released, significantly affecting the Kalamazoo River. In response to accident investigation findings, incident report data and trends, and stakeholder input, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the hazardous liquid pipeline safety regulations to improve protection of the public, property, and the environment by closing regulatory gaps where appropriate and ensuring that operators are increasing the detection and remediation of pipeline integrity threats, and mitigating the adverse effects of pipeline failures. On October 18, 2010, PHMSA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (75 FR 63774). The ANPRM solicited stakeholder and public input and comments on several aspects of the hazardous liquid pipeline regulations being considered for revision or updating to address various pipeline safety issues.

Subsequently, Congress enacted the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90) (2011 Pipeline Safety Act). That legislation included several provisions that are relevant to the regulation of hazardous liquid pipelines. The 2011 Pipeline Safety Act included mandates for PHMSA to complete studies on topics including existing Federal and State regulations for gathering lines, on automatic shutdown and remote control valves, expanding integrity management requirements beyond high-consequence areas, and on the leak detection systems used by hazardous liquid operators. PHMSA completed these studies and submitted the valve and leak detection studies to Congress on December 27, 2012; the gathering line study to Congress on May 8, 2015; and the integrity management (IM) study in April of 2016. These studies are available in the docket for this rulemaking.

Shortly after the 2011 Pipeline Safety Act was passed, the National Transportation Safety Board (NTSB) issued its accident investigation report on the Marshall, MI, accident on July 10, 2012. In it, the NTSB made recommendations regarding the need to revise and update hazardous liquid pipeline regulations. Specifically, the NTSB issued recommendations P–12–03 and P–12–04, which addressed detection of pipeline cracks and ''discovery of condition,'' respectively. The ''discovery of condition'' recommendation would require, in cases where a determination about pipeline threats has not been obtained within 180 days following the date of inspection, that pipeline operators notify PHMSA and provide an expected date when adequate information will become available.

The Government Accounting Office (GAO) also issued a recommendation in 2012 concerning hazardous liquid and gas gathering pipelines. Recommendation GAO–12–388, dated March 22, 2012, states, ''To enhance the safety of unregulated onshore hazardous liquid and gas gathering pipelines, the Secretary of Transportation should direct the PHMSA Administrator to collect data from operators of federally unregulated onshore hazardous liquid and gas gathering pipelines, subsequent to an analysis of the benefits and industry burdens associated with such data collection.''

On October 13, 2015, PHMSA published a NPRM to seek public comments on proposed changes to the hazardous liquid pipeline safety regulations (80 FR 61609). A summary of those proposed changes is provided later in this document.

Between the publication of the NPRM and this final rule, the President signed the ''Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016'' (PIPES Act of 2016), Public Law 114–183, on June 22, 2016. While the PIPES Act of 2016 contained several mandates that must be addressed

through rulemaking, certain provisions are self-executing standards that can be incorporated into this final rule rulemaking without a prior NPRM and opportunity to comment. Those changes are outlined in Section V of this document.

*B. Summary of the Major Provisions of the Regulatory Action*

In response to these mandates, recommendations, lessons learned, and public input, PHMSA is making certain amendments to the Pipeline Safety Regulations affecting hazardous liquid pipelines. The first and second amendments extend reporting requirements to certain hazardous liquid gravity and rural gathering lines not currently regulated by PHMSA. The collection of information about these lines, including those that are not currently regulated, is authorized under the Pipeline Safety Laws, and the resulting data will assist in determining whether the existing Federal and State regulations for these lines and the scope of their applicability are adequate.

The third amendment requires inspections of pipelines in areas affected by extreme weather or natural disasters that could impose unexpected longitudinal or circumferential pipe loads, or other risks to the pipeline's integrity and continued safe operation. This provision affects all covered lines under § 195.1, whether they be onshore or offshore, and in a high consequence area (HCA) or outside an HCA.[1] Such inspections will help to ensure that operators can safely operate pipelines after these events.

The fourth amendment requires integrity assessments at least once every 10 years, using inline inspection tools or other technology, as appropriate for the threat being assessed, of onshore, piggable, hazardous liquid pipeline segments located outside of HCAs. Existing regulations require operators to assess hazardous liquid pipeline segments located inside HCAs at least once every 5 years. These assessments will provide important information to operators about the condition of these pipelines, including the existence of internal and external corrosion and deformation anomalies.

The fifth amendment extends the required use of leak detection systems beyond HCAs to all regulated hazardous liquid pipelines, except for offshore gathering and regulated rural gathering pipelines. The use of such systems will help to mitigate the effects of hazardous liquid pipeline failures that occur outside of HCAs.

The sixth amendment requires that all pipelines in or affecting HCAs be capable of accommodating in-line inspection tools within 20 years, unless the basic construction of a pipeline cannot be modified to permit that accommodation. In-line inspection tools are an effective means of assessing the integrity of a pipeline and broadening their use will improve the detection of anomalies and prevent or mitigate future accidents in high-risk areas. Finally, PHMSA is clarifying other regulations and is incorporating Sections 14 and 25 of the PIPES Act of 2016 to improve regulatory certainty and compliance.

*C. Cost and Benefits*

Consistent with Executive Orders 12866 and 13563, PHMSA has prepared an assessment of the benefits and costs of the rule as well as reasonably feasible alternatives. PHMSA estimates that up to 502 hazardous liquid operators may incur costs to comply with the NPRM. The estimated annual costs for individual components of the requirements in this rulemaking range between approximately $5,000 and $10.5 million, with aggregate costs of approximately $19.5 million to $21.4 million for all requirements.[2]

This final rule is primarily designed to mitigate or prevent hazardous liquid pipeline incidents, and is expected to reduce pipeline incident damages, including injuries and fatalities, cleanup and response costs, property damage, product loss, and ecosystem impacts. The rule's information reporting requirements are designed to provide PHMSA information to inform regulatory decision-making. The Regulatory Impact Analysis (RIA) for this final rule is available in the docket. The table below provides a summary of the estimated costs and benefits for each of the eight major provisions and in total (see the RIA for the details of these estimates).

ANNUALIZED COSTS AND BENEFITS BY REQUIREMENT AREA (2017$) [3]

| Final rule requirement area | Annual costs [1] | | Benefits |
|---|---|---|---|
| | 3% discount rate | 7% discount rate | |
| 1. Reporting requirements for gravity lines | $5,000 | $5,000 | Better risk understanding and management.[2] |
| 2. Reporting requirements for gathering lines | $75,000 | $76,000 | Better risk understanding and management.[3] |
| 3. Inspections of pipelines in areas affected by extreme weather events or natural disasters [4]. | Minimal | Minimal | Additional clarity and certainty for pipeline operators. |
| 4. Assessments of onshore pipelines that are not already covered under the IM program using ILI every 10 years [5 6]. | $6,467,000 | $6,467,000 | Avoided incidents and damages through detection of safety conditions.[7] |
| 5. IM repair criteria [8] | $0 | $0 | $0. |
| 6. LDSs on pipelines located outside HCAs [6] | $8,652,000 | $10,508,000 | Reduced damages through earlier detection and response.[9] |
| 7. Increased use of ILI tools [10] | Minimal | Minimal | Improved detection of pipeline flaws.[10] |
| 8. Clarify certain IM plan requirements | $4,269,000 | $4,343,000 | Reduced damages through prevention and earlier detection and response.[11] |
| Total | $19,468,000 | $21,399,000 | Reduced damages from avoiding and/or mitigating hazardous liquid releases. |

[1] Costs in this table are rounded to the nearest thousand dollars and may differ from costs presented in individual sections of the document. One-time costs are annualized over a 10-year period using discount rates of 3 percent and 7 percent.

[2] Gravity lines can present safety and environmental risks. Depending on the elevation change, a gravity flow pipeline could have more pressure than a pipeline with pump stations to boost the pressure. The benefits of this requirement are not quantified, but based on social costs of $51 per gallon for releases from regulated gathering lines (see Section 2.6.2), the information would need to lead to measures preventing the release of 101 gallons per year to generate benefits that equal the costs.

[1] High Consequence Areas are defined in 49 CFR 195.450.

[2] Estimated costs are annualized using a 7 percent discount rate.

[3] The benefits are not quantified, but based on social costs of $51 per gallon for releases from regulated gathering lines (see Section 2.6.2), the information would need to lead to measures preventing the release of 1,493 gallons per year to generate benefits that equal the costs.

[4] To the extent that the 72-hour timeline required in the final rule results in higher costs for conducting inspections following a disaster (e.g., due to staff overtime), the final rule could result in costs not reflected in this analysis.

[5] PHMSA also conducted a sensitivity analysis that uses alternative baseline assumptions for pipelines not currently covered under the IM program. Specifically, PHMSA estimated the costs for two alternative scenarios: (1) A scenario that assumes that 100 percent of mileage outside HCAs is assessed in the baseline; and (2) a scenario that assumes that 83 percent of the mileage is assessed in the baseline. Costs for these two scenarios are $0 and $12.9 million, respectively.

[6] Excludes gathering lines.

[7] Given a cost per incident of $536,800, incremental assessment of pipelines outside of HCAs would need to prevent 12 incidents for benefits to equate costs.

[8] PHMSA is not finalizing any changes to the repair criteria and as such expects no incremental costs or benefits.

[9] As discussed in Section 2.6.2, 1,918 incidents involved pipelines outside HCAs between 2010 and 2017, or an average of 240 incidents per year. Transmission pipeline incidents outside HCAs had average costs of approximately $382,179, not including additional damages and costs that are excluded or underreported in the incident data. The annual cost estimate is equivalent to the average damages of 28 to 32 such incidents.

[10] Costs (to retrofit pipes to accommodate ILI) and benefits (from avoided damages) would accrue only to the extent that existing practices deviate from industry standards; PHMSA expects costs and benefits will be minimal due to baseline prevalence of ILI-capable pipelines in all areas.

[11] The benefits of reduced costs associated with the prevention or reduction of released hazardous liquids cannot be quantified but could vary in frequency and size depending on the types of failures that are averted. Including additional pipelines in the IM plan, integrating data, and conducting spatial analyses is expected to enhance an operator's ability to identify and address risk. The societal costs associated with incidents involving pipelines in HCAs average $1.7 million per incident (see Section 2.6.2). The annual cost estimates for this requirement are equivalent to the average damages from less than three such incidents. This is relative to an annual average of 161 incidents in HCAs between 2010 and 2017.

## II. Background

### *A. Detailed Overview*

This final rule addresses the requirements established by Congress in the 2011 Pipeline Safety Act, which are consistent with the emerging needs of the Nation's hazardous liquid pipeline system. This final rule also advances an important safety need to adapt and expand risk-based safety practices considering changing markets and a growing national population whose location choices are in ever-closer proximity to existing pipelines.

This final rule strengthens protocols for IM, including protocols for inspections, and improves and streamlines information collection to help drive risk-based identification of the areas with the greatest safety deficiencies.

#### Hazardous Liquid Infrastructure Overview

There are two major types of pipelines along the petroleum transportation route: Gathering pipeline systems, and crude oil and refined products pipeline systems. The location, construction and operation of these systems are generally regulated by Federal and State requirements.

Gathering lines are typically smaller pipelines no more than 8⅝ inches in diameter that transport petroleum from onshore and offshore production facilities. Hazardous liquid pipelines transport the crude oil from the gathering systems to refineries and from refineries to distribution centers. Hazardous liquid lines transport both crude and refined products, and can be hundreds of miles long. These lines may cross State and continental borders, and range in size from 2 to 48 inches in diameter. Hazardous liquid pipeline networks also include pump stations, which move the product through the pipelines, and storage terminals. Changes in product demand has also led to efforts by operators to increase pipeline capacity through flow-direction reversals or converting natural gas pipelines into hazardous liquid pipelines.

Per PHMSA's database, 43 percent of all hazardous liquid pipelines were installed prior to 1970.[4] However, pipeline manufacturing, construction, and operational and maintenance practices have been improving steadily in recent decades, and some older pipes are susceptible to certain manufacturing or construction defects. For example, low-frequency electric resistance welded (ERW) pipe used from the early 1900s through the post-World War II construction boom that lasted well into the 1970s is vulnerable to seam-quality issues. Since the early 1970s, many improvements in pipe manufacturing and materials have been made, and steel and seam properties of pipe have improved with the increased use of high-frequency electric welded (HF–ERW), submerged arc welded (SAW), and seamless pipe (SMLS).[5] In addition, smart pigs, which are tools that record information about the internal conditions of a pipeline, were not developed until the 1960s and 1970s prior to the adoption of the part 195 regulations.

Since 2012, U.S. oil production has increased about 70 percent from approximately 2.4 to 3.4 Billion barrels annually [6] resulting in the United States becoming the world's largest producer of liquid fuels in early 2014. Much of the recent increases in production have been in tight oil plays. Tight oil shale formations are heterogeneous and vary widely over relatively short distances and are subjected to fracking. Examples of tight oil formations include the Bakken Shale, the Niobrara Formation, Barnett Shale, and the Eagle Ford Shale in the United States. Per data from the U.S. Energy Information Administration (EIA), in 2017, tight oil plays accounted for approximately half of the U.S. production, balancing declining production in older plays. While tight oil from shale plays has historically been more difficult to extract, improvements in drilling and production methods, such as horizontal drilling and hydraulic fracturing, have made it economically recoverable. These tight oil plays are located both in regions that have had an oil extraction industry for decades and new regions, such as the Bakken region in North Dakota and Montana, that were not previously oil-producing areas. This has expanded U.S. refiners' access to domestically produced crudes, and U.S. crude oil imports dropped by 7 percent since 2012.[7] Additionally, exports have risen from minimal amounts in 2012 to

[3] Numbers in this table may not sum due to rounding.

[4] PHMSA's Annual Report Mileage for Hazardous Liquid or Carbon Dioxide Systems; *https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids.*

[5] HF–ERW steel pipe has a welded pipe seam made using a high frequency welding current. SMLS steel pipe has no longitudinal weld seam. SAW steel pipe has a weld seam made using a submerged welding arc in a bed of powdered flux to shield it from impurities.

[6] U.S. Energy Information Administration, Crude Oil Production. Producers extracted 2.4 billion barrels of crude oil from U.S. fields in 2012 and 3.4 billion barrels of crude oil in 2017. *https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm.*

[7] EIA, U.S. Imports of Crude Oil (Thousands of Barrels per Day). *https://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_epc0_im0_mbblpd_a.htm.*

over a million barrels per day in 2017.[8] These supply increases and spatial changes in production patterns are creating wide-ranging impacts on liquid fuels transportation infrastructure.

Regulatory History

Congress established the current framework for regulating the safety of hazardous liquid pipelines in the Hazardous Liquid Pipeline Safety Act (HLPSA) of 1979 (Pub. L. 96–129). The HLPSA provides the Secretary of Transportation (the Secretary) with the authority to prescribe minimum Federal safety standards for hazardous liquid pipeline facilities. That authority, as amended in subsequent reauthorizations, is currently codified in the Pipeline Safety Laws (49 U.S.C. 60101, *et seq.*).

PHMSA is the agency within DOT that administers the Pipeline Safety Laws. PHMSA has issued a set of comprehensive safety standards for the design, construction, testing, operation, and maintenance of hazardous liquid pipelines. Those standards are codified in the Hazardous Liquid Pipeline Safety Regulations (49 CFR part 195).

Part 195 applies broadly to the transportation of hazardous liquids or carbon dioxide by pipeline, including on the Outer Continental Shelf, with certain exceptions set forth by statute or regulation. A combination of prescriptive and management-based safety standards is used (*i.e.,* an objective is specified, but the method of achieving that objective is not). Risk management principles play a key role in the IM requirements.

PHMSA exercises primary regulatory authority over interstate hazardous liquid pipelines, and the owners and operators of those facilities must comply with safety standards in part 195. States may apply to PHMSA for a certification to conduct inspections of intrastate hazardous liquid pipelines. Public utility commissions administer most State pipeline safety programs. These State authorities must adopt the Pipeline Safety Regulations as part of a certification or agreement with PHMSA, but may establish more stringent safety standards for intrastate pipeline facilities within their State regulatory authorities. PHMSA is precluded from regulating the safety standards or practices for an intrastate pipeline facility if a State is currently certified to regulate that facility. States certified to regulate their intrastate lines can also enter into agreements with PHMSA to serve as an agent for inspecting interstate facilities, and they can receive Federal monetary grants to off-set the costs of those State inspections.

In 2000 and 2002, the Office of Pipeline Safety (OPS) published regulations requiring IM programs for hazardous liquid pipeline operators in response to a hazardous liquid incident in Bellingham, WA, in 1999 that killed three people.[9] The regulations were broad-reaching and supplemented PHMSA's prescriptive safety requirements with performance and process-oriented requirements. The approach aimed to set expectations for operators while giving them a degree of flexibility in how they complied with those expectations. The objectives of the IM regulations were to accelerate and improve the quality of integrity assessments conducted on pipelines in areas with the highest potential for adverse consequences; promote a more rigorous, integrated, and systematic management of pipeline integrity and risk by operators; strengthen the government's role in the oversight of pipeline operator integrity plans and programs; and increase the public's confidence in the safe operation of the Nation's pipeline network.

In January 2011, PHMSA published the Hazardous Liquid Integrity Management Progress Report,[10] which reported on PHMSA's progress in achieving the program objectives and examined accident trends. The report found that the IM rule and PHMSA's rigorous oversight of operator compliance with the rule are contributing to improved safety performance, including a reduction in the frequency of significant accidents and a decrease in volume spilled in significant accidents.

PHMSA's Progress on Integrity Management

The original part 195 Pipeline Safety Regulations were not designed with risk management in mind. In the mid-1990s, following models from other industries such as nuclear power, PHMSA started to explore whether a risk-based approach to regulation could improve safety of the public and the environment. During this time, PHMSA found that many operators were performing forms of IM that varied in scope and sophistication but there were not consistent minimum standards or requirements.

Since the implementation of the IM regulations more than 15 years ago, many factors have changed. Most importantly, there have been sweeping changes in the oil industry, and the Nation's relatively safe but aging pipeline network faces increased pressures from these changes. Long-identified pipeline safety issues, some of which IM set out to address, remain problems. Infrequent but severe accidents indicate that some pipelines continue to be vulnerable to failures stemming from, among other things, outdated construction methods or materials. Some severe pipeline accidents have occurred in areas outside HCAs where the application of IM principles is not required.[11]

The current IM program is both a set of regulations and an overall regulatory approach to improve pipeline operators' ability to identify and mitigate the risks to their pipeline systems. On the operator level, an IM program includes adopting procedures and processes to identify HCAs, which are areas with the greatest population density and environmental sensitivity; determining likely threats to the pipeline within the HCA; evaluating the physical integrity of the pipe within the HCA; and repairing or remediating any pipeline defects found. Because these procedures and processes are complex and interconnected, effective implementation of an IM program relies on continual evaluation and data integration.

Operators have made great progress towards achieving the IM objectives. Operators have an improved understanding of the precise locations of their HCAs—those areas where integrity assessments and other protective measures spelled out in the IM rule must be taken to assure public safety and environmental protection. During an incident, petroleum can spread over large areas and cause environmental damage. The IM protections for HCAs are designed to account for the potential environmental and community risks from oil releases. Per PHMSA's hazardous liquid annual

[8] EIA, U.S. Exports of Crude Oil (Thousand Barrels per Day). *https://www.eia.gov/dnav/pet/pet_move_exp_dc_NUS–Z00_mbblpd_a.htm.*

[9] 65 FR 75378; December 1, 2000; Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline). 67 FR 1650; January 14, 2002; Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Repair Criteria). 67 FR 2136; January 16, 2002; Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With Less Than 500 Miles of Pipelines).

[10] *http://primis.phmsa.dot.gov/iim/IM_Jan2011_StatusReport_01_23_11.pdf.*

[11] Per PHMSA annual report data accessed May 14, 2019, 1677 non-HCA accidents have occurred since 2010. Of these accidents, 908 resulted in a ''large'' spill, which for reporting purposes is defined as those spills where there was a fatality, injury, fire, explosion, water contamination, property damage of greater than $50,000, or an unintentional loss of product greater than 210 gallons (5 bbls).

data, 42 percent of the Nation's hazardous liquid pipelines [12] can potentially affect HCAs and thus receive the enhanced level of integrity assessment and protection mandated by the IM rule. As required by the IM rule, operators have also conducted baseline integrity assessments on all pipelines that could affect HCAs and have begun conducting reassessments of these same pipeline segments. Through this requirement to assess their pipelines, operators now have an improved understanding of the condition of pipelines in these safety-sensitive areas.

According to PHMSA's January 2011 Hazardous Liquid Integrity Management Progress Report, which tracked the progress and effectiveness of the IM program in its first decade, as a result of these initial baseline assessments, operators have made more than 7,600 repairs of anomalies that required immediate attention, remediated over 28,000 other conditions on a scheduled basis, and addressed an additional 79,000 anomalies that were not required to be addressed by the IM rule, thus significantly improving the condition of the Nation's pipelines.

However, based on recent accidents and mandates from the 2011 Pipeline Safety Act, improvement is still needed in the areas of data integration and their use in risk modelling, risk analysis, and to identify and implement additional preventive and mitigative measures to reduce risk. Improving data integration is critical, as the integrity assessment provisions of the rule only address some of the causes of pipeline failures.

Inadequate Leak Detection, Exposure to Weather, Increased Use, and Age Can Increase the Risk of Pipeline Incidents

Risk factors for pipeline safety issues stem from many sources, including manufacturing issues, external weather and environmental factors, land-use activities near pipelines, other operational issues, and age-related integrity issues.

On July 25, 2010, a segment of a 30-inch-diameter pipeline called Line 6B, owned and operated by Enbridge Incorporated, ruptured in a wetland area in Marshall, MI. Per §§ 195.450 and 195.6, this area was identified by the operator as an ''other populated area,'' which meant it was within an HCA. Per the NTSB's Pipeline Accident Report on the incident, the rupture occurred during the last stages of a planned shutdown and was not discovered or addressed for over 17 hours. During the time lapse, Enbridge twice pumped additional oil (81 percent of the total release) into Line 6B during two startups; the total release was estimated by Enbridge to be 843,444 gallons of crude oil.[13] The oil saturated the surrounding wetlands and flowed into the Talmadge Creek and the Kalamazoo River. In all, 4,632 acres of land were impacted, 346 animals were killed, 4,208 animals were oiled, and fish and benthic invertebrate communities were impacted. Further, approximately 100,000 recreational user-days were lost, including activities like fishing and boating, and general shoreline park and trail use. The incident also resulted in losses of tribal use, as the Kalamazoo River is used by two tribes for water travel; subsistence; and medicinal, economic, educational, and ceremonial services.[14] This incident motivated a reexamination of hazardous liquid pipeline safety. The NTSB made recommendations to PHMSA and the regulated industry regarding the need to improve hazardous liquid pipeline safety. Congress also directed PHMSA to reexamine many of its safety requirements, including the expansion of IM regulations to more hazardous liquid pipelines. Other recent accidents, including a pair of related failures that occurred in 2010 on a crude oil pipeline in Salt Lake City, UT, corroborated the significance of having an adequate means for identifying and responding to leaks in all locations.

The Nation's pipeline system also faces significant risk from failure due to extreme weather events and natural disasters, such as hurricanes, floods, mudslides, tornadoes, and earthquakes. On January 17, 2015, a breach in the Bridger Pipeline Company's Poplar system resulted in a spill into the Yellowstone River near the town of Glendive, MT, releasing 31,835 gallons (758 barrels) [15] of crude oil into the river and affecting local water supplies. Information indicated over 100 feet of pipeline was exposed on the river bottom, and the release point was near a girth weld. A depth of cover survey indicated sufficient cover in late 2011,[16] but the area experienced localized flooding in early 2014. A previous crude oil spill into the Yellowstone River in 2011 near Laurel, MT, was caused by channel migration and river bottom scour, leaving a large span of the pipeline exposed to prolonged current forces and debris washing downstream in the river. Those external forces damaged the exposed pipeline.

In October 1994, flooding along the San Jacinto River led to the failure of eight hazardous liquid pipelines and undermined a number of other pipelines. The escaping products were ignited, leading to 547 people in the area suffering extensive smoke inhalation or burn injuries.[17] According to PHMSA's Accident and Incident Data for hazardous liquid pipelines, from 2010 to 2017, there were 145 reportable incidents [18] in which storms or other severe natural force conditions damaged pipelines and resulted in their failure. Operators reported total damages of over $232 million from these incidents.[19] PHMSA has issued several Advisory Bulletins to operators warning about extreme weather events and the consequences of flooding events, including river scour and river channel migration. Further, in December 2017, the American Petroleum Institute issued a Recommended Practice 1133 that provided guidance to operators on how to identify at-risk river crossings and take measures to reduce such risks before, during, and after flooding- and river-scour events.

In addition to external weather and environmental threats, changing production and shipment patterns are increasing stress on the Nation's

[12] *http://phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=a872dfa122a1d110VgnVCM1000009ed07898RCRD&vgnextchannel=3430fb649a2dc110VgnVCM1000009ed07898RCRD&vgnextfmt=print.*

[13] National Transportation Safety Board: ''Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010,'' Accident Report NTSB/PAR–12/01, adopted 2012; *http://www.ntsb.gov/investigations/AccidentReports/Reports/PAR1201.pdf.*

[14] U.S. Fish and Wildlife Service: ''Final Damage Assessment and Restoration Plan/Environmental Assessment for the July 25–26, 2010 Enbridge Line 6B Oil Discharges near Marshall, MI;'' Sections 1.4—Summary of Natural Resource Injuries and 3.0—Injury Assessment and Quantification. October 2015. *https://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/pdf/FinalDARP_EA_EnbridgeOct2015.pdf.*

[15] PHMSA Database: ''Operator Information: Incident and Mileage Data: Bridger Pipeline LLC,'' *http://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_31878.html?nocache=4851%20-%20_Incidents_tab_3#_OuterPanel_tab_2.*

[16] PHMSA, Corrective Action Order, CPF No. 5–2015–5003H, page 4, January 23, 2015; *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Pipeline/520155003H_Corrective%20Action%20Order_01232015.pdf.*

[17] NTSB, Pipeline Special Investigation Report, ''Evaluation of Pipeline Failures During Flooding and of Spill Response Actions, San Jacinto River Near Houston, Texas, October 1994;'' NTSB/SIR–96/04, Adopted September 6, 1996.

[18] Reporting thresholds for hazardous liquid pipelines are established at § 195.50. Operators must report any failures of a hazardous liquid pipeline resulting in any of the following: (1) An explosion or fire not intentionally set by the operator, (2) A release of 5 gallons or more of hazardous liquid or carbon dioxide, (3) The death of an individual, (4) Personal injury requiring hospitalization, (5) Estimated property damage exceeding $50,000.

[19] PHMSA Hazardous Liquid Accident Reports. *https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-flagged-files.*

pipeline system. Shifting production to tight oil production like shale plays have changed U.S. oil production locations, as well as the types of crude transported in the Nation's pipelines. The U.S. pipeline system has previously moved crude oil from interior production regions to the Gulf of Mexico refineries, and petroleum products from Gulf Coast refineries to the interior of the country. However, increased tight oil production requires significant infrastructure expansion in new areas, and shifting production areas are changing the patterns of oil transport. Many operators are adapting their systems to move crude oil to markets formerly dependent on imports by modifying existing pipelines. These modifications can be made by reversing flow directions and repurposing natural gas pipelines; in some cases pipeline expansion projects can also increase pumping capability with minimal alterations of the pipeline itself.

Reversing a pipeline's flow, modifying pump station placement and operation, changing commodities, or making other changes to a pipeline's historical hydraulic gradient can impose new stresses on the system due to altered pressure gradients, cycling, and flow rates. Furthermore, certain commodities and low flow rates may create new risks of internal corrosion. Occasional failures on hazardous liquid pipelines have occurred after operational changes that include flow reversals and product changes. PHMSA has noticed several recent or proposed flow reversals and product changes on a number of hazardous liquid and gas transmission lines. In response to this phenomenon, on September 18, 2014, PHMSA issued an Advisory Bulletin [20] notifying operators of the potentially significant impacts such changes may have on the integrity of a pipeline.

Data indicate that some pipelines also continue to be vulnerable to issues stemming from outdated construction methods or materials. Much of the older pipe in the Nation's pipeline infrastructure was made before the 1970s using techniques that have proven to contain latent defects due to the manufacturing process.[21] Such defects cause the pipe to be susceptible to developing hook cracks or other anomalies that may, over time, lead to failures if they are not timely repaired. For example, line pipe manufactured using low-frequency electric resistance welding is susceptible to seam failure. A substantial amount of this type of pipe is still in service; per PHMSA's ''Miles by Decade of Installation Inventory Reports'' for hazardous liquid lines, there were 92,271 miles of pre-1970s pipe still in service in 2017.[22] The IM regulations include specific requirements for evaluating such pipe if located in HCAs, but infrequent-yet-severe failures that are attributed to longitudinal seam defects continue to occur. Per PHMSA's Accident and Incident database, between 2010 and 2017, 84 reportable incidents were attributed to seam failures, resulting in over $220 million of property damage.[23] [24]

In the final rule, PHMSA strengthens the IM requirements to identify and respond to the increased pipeline risks resulting from operational changes, weather and associated geotechnical hazards, and increased use and age of a pipe.

Enhanced Collection of Data

To keep the public safe and to protect the Nation's energy security and reliability, operators and regulators must have an intimate understanding of their entire pipeline system, including threats and operations. However, with operators who are not required to report certain information on certain currently unregulated pipelines, and with aging pipelines that are not modernized for internal inspection, there continue to be data gaps that make it hard to fully understand the extent of the potential safety risks to the integrity of the Nation's pipeline system.

PHMSA's regulations exempt rural gathering pipelines and gravity pipelines. Gravity pipelines carry product by means of gravity, and many gravity lines are short and within tank farms or other pipeline facilities. However, some gravity lines are longer and can build up high pressures. PHMSA is aware of gravity lines that traverse long distances with significant elevation changes, which could have significant consequences in the event of a release. Both gravity and gathering lines are currently excluded from reporting requirements, leaving large gaps in PHMSA's knowledge of these unregulated pipeline systems. This is especially true because much of operators' and PHMSA's data is obtained through testing and inspection under IM requirements, which are not currently required for gathering and gravity lines.

To assess a pipeline's integrity, operators generally choose between three methods of testing a pipeline: In-line inspection (ILI), pressure testing, and direct assessment (DA). In 2017, PHMSA estimates that slightly over 90 percent of the hazardous liquid line mileage in HCAs is already piggable and almost 90 percent of these lines were being inspected with ILI tools.

Operators perform ILIs by using special tools, sometimes referred to as ''smart pigs,'' which are usually pushed through a pipeline by the pressure and flow rate of the product being transported. As the tool travels through the pipeline, it identifies and records potential pipe defects or anomalies. Because these tests can be performed with product in the pipeline, the pipeline does not have to be taken out of service for testing to occur, which can reduce cost to the operator and possible service disruptions to consumers. Further, ILI is a non-destructive testing technique, and it can be less costly on a per-unit basis to perform than other assessment methods. However, a very small portion of hazardous liquid pipe segments cannot be inspected through ILI because they are too short in length, which makes getting accurate ILI tool results impractical due to tool speed variations. Other hazardous liquid pipelines might not be inspected through ILI because they do not have enough operating pressure or flow rate to run the tool.

Pipeline operators typically use pressure tests to determine the integrity (or strength) of the pipeline immediately after construction and before placing the pipeline in service. In a pressure test, a test medium (typically water) inside the pipeline is pressurized to a level greater than the normal operating pressure of the pipeline. This test pressure is held for a number of hours to ensure there are no leaks in the pipeline.

Direct assessment is the evaluation of various locations on a pipeline for corrosion threats. Operators will review operational records and indirectly inspect the pipeline with coating surveys, such as close interval, direct

[20] PHMSA: ''Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service'' *Advisory Bulletin,* 79 FR 56121, September 18, 2014; *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Advisory%20Notices/ADB-2014-04_Flow_Reversal.pdf.*

[21] See *https://primis.phmsa.dot.gov/comm/FactSheets/FSPipeManufacturingProcess.htm* for more information about pipe manufacturing processes and known latent defects.

[22] PHMSA's Annual Report Mileage for Hazardous Liquid or Carbon Dioxide Systems; *https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids.*

[23] PHMSA Hazardous Liquid Accident Reports. *https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-flagged-files.*

[24] The data can be narrowed down by selecting the ''hl2010toPresent'' Excel spreadsheet. Cell ''CR'' indicates the identified location of the failure and whether the failure was in the pipe body or in the pipe seam. If it was identified as a pipe seam failure, Cells ''CW'' and ''CX'' provide additional information on pipe seam type and pipe seam details, respectively.

current voltage gradient, and alternating current voltage gradient surveys, to detect areas where the protective, anti-corrosion coating applied to a pipeline may be faulty, as corrosion may be more likely in these locations. Operators subsequently excavate and examine areas that are likely to have suffered from corrosion. DA can be costly to use without targeting specific locations. A limited number of specific locations, however, may not give an accurate representation of the condition of lengths of entire pipeline segments.

Ongoing research appears to indicate that ILI and hydrostatic pressure ''spike'' testing are more effective than DA for identifying pipe conditions related to cracking defects such as dents with stress cracks, stress corrosion cracking (SCC), selective seam weld corrosion (SSWC), and other seam-type cracking.[25] Hydrostatic testing of hazardous liquid pipelines requires testing to at least 125 percent of the maximum operating pressure (MOP) for at least 4 continuous hours and an additional 4 hours at a pressure of at least 110 percent of MOP if the pipe is not visible. If there is concern about pipe cracks that might grow due to pressure cycling, operating stress levels, environmental conditions, and fatigue, then a spike test at a pressure of up to or over 139 percent of MOP for a short period (up to a 30-minute hold time or longer) may be conducted. A spike test detects pipe body and seam cracks by causing any cracks that would later grow to failure to fail during the hydrostatic test. Both regulators and operators have expressed interest in improving ILI methods as an alternative to hydrostatic testing for better risk evaluation and management of pipeline safety. Hydrostatic pressure testing can result in substantial costs and occasional disruptions in service, whereas ILI testing can obtain data that is not otherwise obtainable via other assessment methods, such as pipe wall loss, dents, and cracking.

In this final rule, PHMSA is addressing data gaps and increasing the quality of data collected by expanding the reporting requirements to cover both gathering and gravity lines and requiring that all lines in HCAs be piggable for a better understanding of pipeline characteristics. The final rule will also require operators to fully integrate their pipeline data across all data sources to close any remaining gaps.

Looking at Risk Beyond HCAs

In addition to improving IM programs for the pipe that they already cover, PHMSA understands the importance of carefully reconsidering the scope of the areas covered by IM requirements. While PHMSA's hazardous liquid IM program manages risks primarily by focusing oversight on areas with the greatest population density and environmental sensitivity, it is imperative to protect the safety of environmental resources and communities throughout the country. The changing landscape of production, consumption, and product movement merits a fresh look at the current scope of IM coverage.

The current definition of an HCA uses Census Bureau definitions of urbanized areas or areas with a concentrated population.[26] The HCA definition also encompasses ''unusually sensitive areas,'' including drinking water or ecological resource areas and commercially navigable waterways. However, liquid spills, even outside HCAs, can result in environmental damage necessitating clean up, restoration costs, and lost use and non-use values. If operators do not periodically assess and repair their pipelines, liquid spills are more likely to occur. In fact, devastating incidents have occurred outside of HCAs in rural areas where populations are sparse, and operators have not been required to assess their lines as frequently as lines covered by IM. Per PHMSA's databases, between 2010 and 2017, significant incidents at hazardous liquid facilities accounted for over 993,097 barrels spilled, 24 injuries, and 10 fatalities. Out of those, over 702,091 barrels spilled, 10 injuries, and four fatalities occurred in non-HCA areas.[27] These data show that ruptures with the potential to affect populations, the environment, or commerce, can occur anywhere on the Nation's pipeline system.

If constant improvement and zero incidents are goals for pipeline operators,[28] extending and prioritizing IM assessments and principles to all parts of pipeline networks is an effective way to achieve those goals. Extending IM assessments and principles to non-HCAs will help clarify vulnerabilities and prioritize improvements, and this final rule takes important steps towards developing that approach and will lead operators to gather valuable information they may not have collected if regulations were not in place.

In this final rule, PHMSA is requiring operators to assess onshore, piggable pipelines outside of HCAs periodically using ILI or other technology, if appropriate, to detect (and remediate) anomalies in all locations within their pipeline systems. PHMSA is providing operators with deadlines to verify their segment analyses to identify any new HCAs and implement the appropriate actions. These changes would ensure the remediation of anomalous conditions that could potentially impact people, property, or the environment, while at the same time allowing operators to allocate their resources based on pipeline risks and the vulnerability of surrounding areas.

Recent Developments in Hazardous Liquid Pipeline Safety Regulation

On October 18, 2010, PHMSA posed a series of questions to the public in the context of an ANPRM titled ''Pipeline Safety: Safety of On-Shore Hazardous Liquid Pipelines'' (75 FR 63774). In that document, PHMSA sought comments on several proposed changes to part 195, including: (1) The scope of part 195 and existing regulatory exceptions, (2) Criteria for designation of HCAs, (3) Leak detection and emergency flow restricting devices, (4) Valve spacing, (5) Repair criteria outside of HCAs, and (6) Stress corrosion cracking. The questions in this ANPRM considered topics relating to the statutory mandates; the post-Marshall, MI, NTSB and GAO recommendations; and other pipeline safety mandates. Twenty-one organizations and individuals submitted comments in response to the ANPRM.

PHMSA reviewed the received comments, the 2011 Pipeline Safety Act,

[25] See: Comprehensive Study to Understand Longitudinal ERW Seam Research & Development study task reports: Battelle Final Reports (''Battelle's Experience with ERW and Flash Weld Seam Failures: Causes and Implications''—Task 1.4), Report No. 13–002 (''Models for Predicting Failure Stress Levels for Defects Affecting ERW and Flash-Welded Seams''—Subtask 2.4), Report No. 13–021 (''Predicting Times to Failure for ERW Seam Defects that Grow by Pressure-Cycle-Induced Fatigue''—Subtask 2.5), and ''Final Summary Report and Recommendations for the Comprehensive Study to Understand Longitudinal ERW Seam Failures—Phase 1''—Task 4.5), which can be found online at: *https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=390.*

[26] Specifically, § 195.450 states that a *high population area* is an urban area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile, and an *other populated area* is a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area.

[27] PHMSA Hazardous Liquid Accident Reports. *https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-flagged-files.*

[28] Major trade associations, including API and INGAA, have publicly committed to a goal of zero incidents. See: *https://www.api.org/oil-and-natural-gas/wells-to-consumer/transporting-oil-natural-gas/pipeline/pipeline-safety* and *https://www.ingaa.org/File.aspx?id=20463 for more details.*

and the NTSB and GAO recommendations, and responded in the subsequent NPRM published on October 13, 2015, (80 FR 61609). In summary, the NPRM addressed the following areas: (1) Reporting requirements for gravity lines, (2) Reporting requirements for gathering lines, (3) Inspections of pipelines following extreme weather events and natural disasters, (4) Periodic assessments of pipelines not subject to IM, (5) Repair criteria, (6) Expanded use of leak detection systems, (7) Increased use of in-line inspection tools, and (8) Clarifying other requirements. A summary of comments and responses to those comments are provided later in the document. The ANPRM and NPRM may be viewed at *http://www.regulations.gov* by searching for Docket No. PHMSA–2010–0229.

*B. Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011*

After the issuance of the ANPRM on October 18, 2010, the 2011 Pipeline Safety Act included several statutory requirements related directly to the topics being considered in the ANPRM. The related topics and statutory citations that PHMSA considered within the context of this rulemaking include, but are not limited to:

- Section 5(f)—Requires, if appropriate, regulations issued by the Secretary to expand integrity management system requirements, or elements thereof, beyond high-consequence areas. These regulations are to be dependent on an evaluation and report of whether integrity management system requirements, or elements thereof, should be expanded beyond high-consequence areas;
- Section 8—Requires, if appropriate, regulations regarding leak detection on hazardous liquid pipelines and establishing leak detection standards. These regulations are to be dependent on a report on the analysis of the technical limitations of current leak detection systems, including the ability of the systems to detect ruptures and small leaks that are ongoing or intermittent, and what can be done to foster development of better technologies, and an analysis of the practicability of establishing technically, operationally, and economically feasible standards for the capability of such systems to detect leaks, and the safety benefits and adverse consequences of requiring operators to use leak detection systems;
- Section 14—Permits PHMSA to issue regulations for pipelines transporting non-petroleum fuels, such as biofuels;
- Section 21—Requires a review on the regulation of Gas (and Hazardous Liquid) Gathering Lines and the issuance of further regulations, if appropriate; and
- Section 29—Requires that operators consider seismicity when evaluating pipeline threats.

*C. National Transportation Safety Board Recommendation*

On July 10, 2012, shortly after the 2011 Pipeline Safety Act was passed, the NTSB issued its accident investigation report on the Marshall, MI, accident. In it, the NTSB made additional recommendations to update the hazardous liquid pipeline regulations. Pertaining directly to this rule, the NTSB issued recommendation P–12–04, which addressed the ''discovery of condition'' as follows:

- NTSB Recommendation P–12–4: ''*Revise Title 49 Code of Federal Regulations 195.452(h)(2), the 'discovery of condition,' to require, in cases where a determination about pipeline threats has not been obtained within 180 days following the date of inspection, that pipeline operators notify the Pipeline and Hazardous Materials Safety Administration and provide an expected date when adequate information will become available.*''

*D. Summary of Each Topic*

This final rule amends the Federal Pipeline Safety Regulations to address the following topics. Details of the changes in this rule are discussed in this document in Section IV, ''Analysis of Comments and PHMSA Response,'' and Section V, ''Section-by-Section Analysis.''

(1) Extend Certain Reporting Requirements to Certain Gravity and Rural Hazardous Liquid Gathering Lines

Gravity lines are pipelines that carry product by means of gravity and are currently exempt from PHMSA regulations. Many gravity lines are short and within tank farms or other pipeline facilities; however, some gravity lines are longer and can build up large amounts of pressure. Further, certain gravity lines may have significant elevation changes, which can lead to serious consequences in the event of a release.

For PHMSA to effectively analyze the safety performance and risk of gravity lines, PHMSA needs basic data about those pipelines. The agency has the statutory authority to gather data for all gravity lines (49 U.S.C. 60117(b)). Accordingly, PHMSA is amending the Pipeline Safety Regulations (PSR) to require that the operators of certain gravity lines comply with requirements for submitting annual, safety-related condition, and incident reports. PHMSA estimates that, at most, five hazardous liquid pipeline operators will be affected. Based on comments to the ANPRM from the American Petroleum Institute and the Association of Oil Pipelines (API–AOPL), 3 operators have approximately 17 miles of gravity-fed pipelines. PHMSA estimated that proportionally 5 operators would have 28 miles of gravity-fed pipelines.

PHMSA is also amending the PSR to extend the annual, accident, and safety-related condition reporting requirements of part 195 to all hazardous liquid gathering lines. The Hazardous Liquid Pipeline Safety Act of 1979 (Pub. L. 96–129) did not mandate the regulation of rural gathering lines because at that time they were not thought to present a significant enough risk to public safety to justify Federal regulation based on the data available at that time. However, the Pipeline Safety Act of 1992 (Pub. L. 102–508) authorized the issuance of safety standards for regulated rural gathering lines based on a consideration of certain factors and subject to certain exclusions. When PHMSA adopted the current requirements for regulated rural gathering lines, the agency made judgments in implementing those statutory provisions based on the information available at that time.

Recent data indicates, however, that PHMSA regulates less than 4,000 miles of the approximately 30,000 to 40,000 miles of onshore hazardous liquid gathering lines in the United States.[29] That means that about 90 percent of the onshore gathering line mileage is not currently subject to any minimum Federal pipeline safety standards. The NTSB has also raised concerns about the safety of hazardous liquid gathering lines in the Gulf of Mexico and its inlets,[30] which are only subject to certain inspection and reburial requirements.

In the ANPRM, PHMSA asked whether the agency should repeal or modify any of the exceptions for hazardous liquid gathering lines. Section 195.1(a)(4)(ii) states that part 195 applies to a ''regulated rural gathering line as provided in § 195.11.'' PHMSA published a final rule on June 3, 2008 (73 FR 31634), that prescribed certain safety requirements for regulated rural gathering lines (*i.e.,* the filing of accident, safety-related condition, and annual reports; establishing the MOP in accordance with § 195.406; installing line markers; and establishing programs for public awareness, damage prevention, corrosion control, and operator qualification of personnel).

The June 2008 final rule did not establish safety standards for all rural hazardous liquid gathering lines. Some of those lines cannot be regulated by statute (*i.e.,* 49 U.S.C. 60101(b)(2)(B) states that ''the definition of ''regulated gathering line'' for hazardous liquid may not include a crude oil gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is in a rural area that is not unusually sensitive to environmental damage''), and Congress did not remove this exemption in the 2011 Pipeline Safety Act.

PHMSA is currently statutorily limited to regulating gathering lines in HCAs and ''regulated rural gathering lines,'' which are defined in § 195.11 to mean onshore gathering lines in a rural area that meet certain criteria (*i.e.,* has a nominal diameter from 6⅝ in. (168 mm) to 8⅝ in. (219.1 mm), is in or within ¼ mile of an unusually sensitive area as defined in § 195.6, and operates at a maximum pressure established under § 195.406). This limitation leaves gaps in the regulation of rural gathering lines not classified as regulated rural gathering lines.

Further, PHMSA currently collects no data on unregulated gathering lines. This lack of data prevents PHMSA from being able to determine whether current regulations should be applied to currently unregulated gathering lines. Therefore, in this final rule, PHMSA is requiring reporting on all hazardous liquid gathering lines and will consider, based on the nature of the data gathered, the appropriateness of additional regulatory requirements, if any, for hazardous liquid gathering lines in the future.

The final rule, however, does not address or require data collection for transportation-related flow lines until further study and cost analyses can be conducted. PHMSA notes that, per Section 12 of the 2011 Pipeline Safety Act, Congress has provided PHMSA with the authority to collect data on pipelines transporting oil off the grounds of the well where it originated and across areas not owned by the producer, regardless of the extent to which the oil has been processed, if at all. Aside from this rulemaking, PHMSA may consider collecting these data in the future. As discussed above, any decision PHMSA makes to expand its oversight of gathering lines beyond what is currently regulated will be driven by risk assessment and analysis based on evaluations of incident and accident data, data related to infrastructure, and further technological advancements such as the unconventional production practices used in shale formations.

*(2) Require Inspections of Pipelines in Areas Affected by Extreme Weather and Natural Disasters*

Extreme weather has been a contributing factor in several pipeline failures. For example, in 1994, flooding in Texas led to river scour and ground movement that caused the failure of eight pipelines and the release of more than 35,000 barrels of hazardous liquids into the San Jacinto River. Some of that released product also ignited, causing minor burns and other injuries to nearly 550 people according to the NTSB. In July 2011, a pipeline failure associated with river bottom scour occurred near Laurel, MT, causing the release of an estimated 1,000 barrels of crude oil into the Yellowstone River. That area had experienced extensive flooding due to warm weather causing the rapid melting of large snowpack levels in the weeks leading up to the failure. The operator estimated the cleanup costs at approximately $135 million. In January 2015, another pipeline failure caused by river bottom scour again occurred on the Yellowstone River, spilling approximately 758 barrels of crude oil into the river, causing the shutdown of nearby drinking-water intakes.[31] Additionally, on October 21, 2016, extreme localized flooding, soil erosion, and ground movement caused a release of over 1,238 barrels of gasoline into the Loyalsock Creek in Lycoming County, PA. Further, on March 20, 2018, heavy rain caused a pipeline to rupture and release 1,400 barrels of diesel fuel into Big Creek at Solitude, IN. Specifically, a girth weld on the pipeline ruptured due to land slippage caused by the saturated soil.

Weather events and natural disasters that can cause river scour, soil subsidence or ground movement may subject pipelines to additional external loads, which could cause a pipeline to fail. These conditions can pose a threat to the integrity of pipeline facilities if those threats are not promptly identified and mitigated. While the existing regulations provide for design standards that consider the load that may be imposed by geological forces, events like the ones described above can quickly impact the safe operation of a pipeline and have severe consequences if not mitigated and remediated as quickly as possible.

PHMSA issued Advisory Bulletins in 2015, 2016, and 2019 to communicate the potential for damage to pipeline facilities caused by severe flooding, including actions that operators should consider taking to ensure the integrity of pipelines in the event of flooding, river scour, river channel migration, and earth movement.[32] As PHMSA has noted in a series of Advisory Bulletins, hurricanes are also capable of causing extensive damage to both offshore and inland pipelines (*e.g.,* Hurricane Ivan, September 23, 2004 (69 FR 57135); Hurricane Katrina, September 7, 2005

[29] PHMSA, ''Hazardous Liquid Pipeline Miles and Tanks,'' *https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?Portalpages&NQUser=PDM_WEB_USER&NQPassword=Public_Web_User1&PortalPath=%2Fshared%2FPDM%20Public%20website%2F_portal%2FPublic%20Reports&Page=Infrastructure&Action=Navigate&col1=%22PHP%20-%20Geo%20Location%22.%22State%20Name%22&val1=%22%22,* retrieved 11/20/2018.

[30] Deborah Hersman, Testimony before the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Committee on Commerce, Science, and Transportation, United States Senate Hearing on Ensuring the Safety of our Nation's Pipelines, Washington DC, 6/24/2010. *https://www.ntsb.gov/news/speeches/DHersman/Pages/Testimony_before_the_Subcommittee_on_Surface_Transportation_and_Merchant_Marine_Infrastructure_Safety_and_Security_Committ.aspx.*

[31] *http://deq.mt.gov/Portals/112/DEQAdmin/DIR/Documents/Bridger%20Consent%20Order/Final%20Bridger%20Consent%20Order.pdf?ver=2017-02-09-121902-843.*

[32] ''Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration,'' April 9, 2015, 80 FR 19114; and January 19, 2016, 81 FR 2943. See also ''Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards,'' May 2, 2019, 84 FR 18919.

(70 FR 53272); Hurricane Rita, September 1, 2011 (76 FR 54531)).

These events demonstrate the importance of working to ensure that our Nation's waterways and the public are adequately protected from pipeline risks in the event of a natural disaster or extreme weather. PHMSA is aware that many operators perform inspections following such events; however, because it is not a requirement, some operators do not. Therefore, PHMSA is amending the PSR to require that operators commence inspection of their potentially affected assets within 72 hours after the cessation of an extreme weather event such as a hurricane, flood, landslide, earthquake, or other natural disaster that has the likelihood to damage infrastructure. PHMSA would not expect operators to comply with these provisions for weather events when, considering the physical characteristics, operating conditions, location, and prior history of the affected system, the event would not have a likelihood of damage to the pipeline. For example, extreme weather events would not include rain events that do not exceed the high-water banks of the rivers, streams or beaches in proximity to the pipeline; rain events that do not result in a landslide in the area of the pipeline; storms that do not produce winds at tropical storm or hurricane level velocities; or earthquakes that do not cause soil movement in the area of the pipeline.

Under this requirement, an operator must inspect all potentially affected pipeline facilities following these types of events to detect conditions that could adversely affect the safe operation of the pipeline. The operator must consider the nature of the event and the physical characteristics, operating conditions, location, and prior history of the affected pipeline in determining whether the event necessitates an inspection as well as the appropriate method for performing the inspection. If the event creates a likelihood that there is damage to pipeline infrastructure, the operator must commence an inspection within 72 hours after the cessation of the event, defined as the point in time when the area can be safely accessed by personnel and equipment, including availability of personnel and equipment, required to perform the inspection. PHMSA has found that 72 hours is reasonable and achievable in most cases based on prior observations of extreme events. If an operator finds an adverse condition, the operator must take appropriate remedial action to ensure the safe operation of a pipeline based on the information obtained from the inspection. Such actions might include, but are not limited to:

- Reducing the operating pressure or shutting down the pipeline;
- Isolating pipelines in affected areas and performing ''stand up'' leak tests;
- Modifying, repairing, or replacing any damaged pipeline facilities;
- Preventing, mitigating, or eliminating any unsafe conditions in the pipeline rights-of-way;
- Performing additional patrols, depth of cover surveys, ILI or hydrostatic tests, or other inspections to confirm the condition of the pipeline and identify any imminent threats to the pipeline;
- Implementing emergency response activities with Federal, State, or local personnel; and
- Notifying affected communities of the steps that can be taken to ensure public safety.

This requirement is based on the experience of PHMSA and is expected to increase the likelihood that operators will find and respond to safety conditions more quickly.

(3) Require Assessments of Pipelines That Are Not Already Covered Under the IM Program Requirements at Least Once Every 10 Years

PHMSA is requiring that operators periodically assess onshore, piggable, hazardous liquid pipeline segments in non-HCAs. PHMSA has determined that expanding assessment requirements to these non-HCA pipeline segments will provide operators with valuable information they may not have collected if regulations were not in place. Such a requirement works to ensure prompt detection and remediation of corrosion and other deformation anomalies across the Nation, not just in populated or environmentally sensitive areas as defined by Federal regulations. There is still considerable consequence risk—regarding personal safety, environmental damage, and economic impact—of a spill in less-populated areas, into waterways not designated as ''commercially navigable,'' recreational areas, commercial fishing areas, and agriculturally productive areas that do not meet the definition of an HCA.

In this rulemaking, § 195.416 requires operators to assess onshore, piggable, non-HCA, hazardous liquid pipeline segments at least once every 10 years, which allows operators to prioritize assessments in HCAs over assessments in non-HCAs (the assessment period is 5 years for hazardous liquid pipeline segments that are in or can otherwise affect an HCA). The individuals who review the results of these assessments will need to be qualified by knowledge, training, and experience and will be required to consider any uncertainty in the results obtained, including ILI tool tolerance, when determining whether any conditions could adversely affect the safe operation of a pipeline. Such determinations will have to be made promptly, but no later than 180 days after an inspection, unless the operator demonstrates that the 180-day deadline is impracticable.

Operators are required to comply with the other provisions in part 195 in implementing the requirements in § 195.416. That includes having appropriate provisions for performing these periodic assessments and any resulting repairs in an operator's procedural manual (see § 195.402); adhering to the recordkeeping provisions for inspections, tests, and repairs (see § 195.404); and taking appropriate remedial action under § 195.401(b)(1), as discussed below.

Such requirements will help ensure operators obtain information necessary for the detection and remediation of corrosion and other deformation anomalies in all locations, not just HCAs. Of the many assessment methods, PHMSA has found that ILI in many cases is the most efficient and effective. Operators can perform ILIs while pipelines are in service without any interruption of product flow. Further, ILIs are non-destructive and can provide information beyond direct assessments, which can only tell whether there is exterior coating damage or corrosion, and hydrotests, which are essentially ''pass'' or ''fail.'' ILI tools, which are constantly improving, can provide accurate information on internal corrosion, external corrosion, cracks, and gouges. Additionally, there is robust guidance and documentation for the use of ILI; API and the National Association of Corrosion Engineers (NACE) have developed standards for ILIs that provide guidelines on appropriate tool selection, assessment procedures, and the qualification of personnel conducting assessments.

Currently, operators said they are performing ILI assessments on a large portion of both HCA and non-HCA pipeline mileage, even though no regulation requires them to assess mileage outside of HCAs. Reported repairs in non-HCA segments reflect this indication. PHMSA wants to best ensure that current assessment rates continue and expand to those areas not voluntarily assessed. PHMSA has determined that by adopting these amendments to the existing pipeline safety regulations, data collection will continue to improve across the entire pipeline system, and anomalies that

may have previously gone undetected in non-HCAs will be detected and repaired in a more consistent manner.

(4) Expand the Use of Leak Detection Systems for Certain Hazardous Liquid Pipelines

With respect to new hazardous liquid pipelines, PHMSA is amending § 195.134 to require that all new covered pipelines, in both HCAs and non-HCAs, have leak detection systems within 1 year after this final rule is published in the **Federal Register**, and all covered pipelines constructed prior to the rule's publication have leak detection systems within 5 years after this rule is published. Recent pipeline accidents, including related failures that occurred in 2010 on a crude oil pipeline in Salt Lake City, UT; a failure of another crude oil pipeline in Santa Barbara, CA, in 2015; a crude oil release in Belfield, ND, in 2016; and the failure of refined products lines in Dono Ana County, NM, in 2018, corroborate the significance of having an adequate means for identifying leaks in all locations along the pipeline right-of-way. PHMSA, aware of the significance of leak detection, held a 2-day workshop in Rockville, MD, on March 27–28 of 2012.[33] These workshops sought comment from the public concerning many of the issues raised in the 2010 ANPRM, including leak detection expansion. Both workshops were well attended, and PHMSA received valuable input from stakeholders on the technical gaps and challenges for future research and ways to leverage resources to achieve common objectives and reduce duplication of research programs. Participants also discussed the development of leak detection for all pipeline types and the capabilities and limitations of current leak detection technologies.

With respect to existing pipelines, part 195 currently contains mandatory leak detection requirements for only those hazardous liquid pipelines that could affect an HCA. Congress included additional requirements for leak detection systems in section 8 of the 2011 Pipeline Safety Act. That legislation requires the Secretary to submit a report to Congress, within 1 year of the enactment date, on the use of leak detection systems, including an analysis of the technical limitations and the practicability, safety benefits, and adverse consequences of establishing additional standards for the use of those systems. Congress authorized the issuance of regulations for leak detection if warranted by the findings of the report.

PHMSA publicly provided the results of the 2012 Kiefner and Associates study on leak detection systems in the pipeline industry, including the current state of technology. The study found that most leak detection technologies can be retrofitted to existing pipelines, though many operators ''fear investing in leak detection systems, with potentially little benefit to show from them and no way to truly measure success in a standardized way,'' resulting in leak detection being implemented ''cautiously, and incrementally, on measurement and other systems that are already in place.''[34]

Based on information available to PHMSA, including post-accident reviews and the Kiefner Report, the need to expand the use of leak detection systems and strengthen the current leak detection requirements is clear. A robust leak detection system is extremely important to hazardous liquid operators because it triggers all other impact mitigation measures that an operator should plan for, including safe flow shutdown, spill containment, cleanup, and remediation. In this final rule, PHMSA is modifying § 195.444 to require a means for detecting leaks on all portions of a hazardous liquid pipeline system, including non-HCA lines, and to require that operators perform an evaluation to determine what kinds of systems must be installed to adequately protect the public, property, and the environment. The factors that must be considered during that evaluation include (but are not limited to) the characteristics and history of the affected pipeline, the capabilities of available leak detection systems, and the location of emergency response personnel. PHMSA is retaining the requirements in §§ 195.134 and 195.444 that each new computational leak detection system comply with the applicable requirements in API Recommended Practice 1130.[35]

Given the difficulties identified in the Kiefner study related to leak detection performance standards, PHMSA is not making any additional changes to the regulations concerning specific leak detection system performance criteria requirements at this time. PHMSA will be studying this issue further and may make proposals concerning this topic in a later rulemaking.

(5) Increase Accommodation of In-Line Inspection Tools

In this final rule, PHMSA is amending the part 195 regulations to require that all hazardous liquid pipelines in HCAs and areas that could affect an HCA be made capable of accommodating ILI tools within 20 years, unless subject to PHMSA approval, the basic construction of a pipeline will not accommodate the passage of such a device or the operator determines it would abandon the pipeline because of the cost of complying with the amendment. Per the petition process at § 190.9, operators would be required to document these determinations and submit the documentation to PHMSA for approval.

Modern ILI tools can provide a relatively complete examination of the entire length of a pipeline, including information about threats that other assessment methods cannot always identify. ILI tools also provide superior information about incipient flaws (*i.e.,* flaws that are not yet a threat to pipeline integrity, but that could become so in the future), thereby allowing these conditions to be monitored over consecutive inspections and remediated before a pipeline failure occurs. Hydrostatic pressure testing, another well-recognized method, reveals flaws (such as wall loss and cracking flaws) that cause pipe failures at pressures that exceed actual operating conditions, but only allows operators to determine whether a required safety margin is met (*i.e.,* pass/fail) and does not provide information about the existence of anomalies that could deteriorate over time between tests. Similarly, external corrosion direct assessment (ECDA) is a form of direct assessment that can identify instances where coating damage or ineffective coatings may be affecting pipeline integrity, but operators must perform additional activities, including follow-up excavations and direct examinations, to verify the extent of that threat. ECDA also does not provide information about the internal condition of a pipe to the extent an ILI tool would.

The current regulations for the passage of ILI devices in hazardous liquid pipelines are prescribed in § 195.120, which require that new and replaced pipelines are designed to accommodate ILI tools. The basis for these requirements is a 1988 law that addressed the Secretary's authority with regard to requiring the accommodation

[33] *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=75.*

[34] Kiefner and Associates, Inc., ''Final Report on Leak Detection Study-DTPH56–11–D–000001,'' December 10, 2012; *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Press%20Release%20Files/Leak%20Detection%20Study.pdf.*

[35] API RP 1130 focuses on the design, implementation, testing and operation of Computational Pipeline Monitoring (CPM) systems that use an algorithmic approach to detect hydraulic anomalies in pipeline operating parameters for hazardous liquid pipelines.

of ILI tools. This law required the Secretary to establish minimum Federal safety standards for the use of ILI tools, but only in newly constructed and replaced hazardous liquid pipelines (Pub. L. 100–561).

As the Research and Special Programs Administration (RSPA; a predecessor agency of PHMSA), explained in the final rule published on April 12, 1994 (59 FR 17275), that promulgated § 195.120, ''the clear intent of th[at] congressional mandate [wa]s to improve an existing pipeline's piggability,'' and to ''require the gradual elimination of restrictions in existing hazardous liquid and carbon dioxide lines in a manner that will eventually make the lines piggable.'' RSPA also noted that Congress amended the 1988 law in the Pipeline Safety Act of 1992 (Pub. L. 102–508) to require the periodic internal inspection of hazardous liquid pipelines, including with ILI tools in appropriate circumstances. In 1996, Congress passed another law further expanding the Secretary's authority to require pipeline operators to have systems that can accommodate ILI tools. In particular, Congress provided additional authority for the Secretary to require the modification of existing pipelines whose basic construction would accommodate an ILI tool to accommodate such a tool and permit internal inspection (Pub. L. 104–304). RSPA established requirements for the use of ILI tools in pipelines that could affect HCAs in a final rule published on December 1, 2000 (65 FR 75378).

Section 60102(f)(1)(B) of the Pipeline Safety Laws allows the requirements for the passage of ILI tools to be extended to existing hazardous liquid pipeline facilities, provided the basic construction of those facilities can be modified to permit the use of smart pigs. The current requirements apply only to new hazardous liquid pipelines and to line sections where the line pipe, valves, fittings, or other components are replaced. Exceptions are also provided for certain kinds of pipeline facilities, including manifolds, piping at stations and storage facilities, piping of a size that cannot be inspected with a commercially available ILI tool, and smaller-diameter offshore pipelines.

In this final rule, PHMSA is taking steps to further facilitate the gradual elimination of pipelines that are not capable of accommodating smart pigs in accordance with the authority provided in section 60102(f)(1)(B). PHMSA is limiting the circumstances where a pipeline can be constructed without being able to accommodate a smart pig. Under the current regulation, an operator can petition the PHMSA Administrator for such an allowance for reasons of impracticability, emergencies, construction time constraints, costs, and other unforeseen construction problems. PHMSA believes that an exception should still be available for emergencies and where the basic existing construction of a pipeline makes that accommodation impracticable.

Regulations already require that new and replaced pipelines accommodate ILI tools, and many of the pipelines covered by this new rule will need to be replaced and therefore will accommodate ILI tools before the end of the 20-year implementation period. Providing industry with sufficient time to implement this provision allows the industry to prioritize retrofits and replacements based on age or other factors; it also reduces the mileage of pipeline potentially needing to be replaced before it has reached the limit of its operational life. PHMSA determined that the 20-year timeline strikes the appropriate balance between the need for upgrades with the operational challenges of making these changes.

(6) Clarify Other Requirements

In this final rule, PHMSA is also making several other clarifying changes to the regulations that are intended to improve compliance and enforcement. First, PHMSA is proposing to revise paragraph (b)(1) of § 195.452 to better harmonize this section with other parts of the current regulations. Currently, § 195.452(b)(2) requires that segments of new pipelines that could affect HCAs be identified before the pipeline begins operations, and § 195.452(d)(1) requires that baseline assessments for covered segments of new pipelines be completed by the date the pipeline begins operation. However, § 195.452(b)(1) does not require an operator to draft its IM program for a new pipeline until 1 year after the pipeline begins operation. These provisions are inconsistent, as the identification of could-affect segments and performance of baseline assessments are elements of the written IM program. PHMSA is amending the table in (b)(1) to resolve this issue by eliminating the 1-year compliance deadline for Category 3 pipelines. An operator of a new pipeline is required to develop its written IM program before the pipeline begins operation—there is no burden associated with this amendment because operators already were required to report to DOT prior to construction.

Second, as mentioned in the non-HCA assessment section, operators of both HCA lines and non-HCA lines will have equal requirements for the ''discovery'' of conditions, which occurs when an operator has adequate information about a condition to determine that it presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable. This could include demonstrating why such information would not be available prior to that date. If an operator believes that unique circumstances exist in a particular case that make the 180-day period impracticable, the operator must submit a notification to PHMSA and provide an expected date when adequate information will become available. The submission of such a notification, by itself, will not affect compliance determinations on whether the 180-day requirement was met. PHMSA is thereby amending the existing ''discovery of condition'' language at § 195.452(h)(2) in the pipeline safety regulations to reflect these changes.

A decade's worth of IM inspection experience has shown that many operators are performing inadequate information analyses (*i.e.,* they are collecting information but are not affording it sufficient consideration, or they are not promptly evaluating the information they have gathered following events that have increased risk, such as historic weather events). Ongoing data integration is one of the most important aspects of the IM program, and operators must account for interactions between threats or conditions affecting the pipeline when setting priorities for dealing with identified issues. For example, evidence of potential corrosion in an area with foreign pipeline crossings,[36] nearby current interference from power lines and electrically powered transport systems, evidence of land movement or waterway channel changes that may impact pipeline integrity, and recent aerial patrol indications of excavation activity could indicate a priority for operators to reassess risk and make timely changes to their IM program to reduce that risk. Consideration of each of these factors individually would not necessarily reveal any need for priority attention. PHMSA is concerned that a major benefit to pipeline safety intended in the IM rule is not being realized

[36] Foreign pipelines can include other hazardous liquid, natural gas, water, sewer, or drainage pipelines.

because of inadequate information analyses.

For this reason, PHMSA is adding specificity to paragraph (g) by establishing several pipeline attributes that must be included in these analyses and requiring explicitly that operators integrate analyzed information. PHMSA is also requiring operators to consider explicitly any spatial relationships among anomalous information. PHMSA supports the use of computer-based geographic information systems (GIS) to record this information. GIS systems can be beneficial in identifying spatial relationships, but analysis is required to identify where these relationships could result in situations adverse to pipeline integrity.

Second, PHMSA is requiring operators to verify their pipeline segment identification (as HCAs or otherwise) annually by determining whether factors considered in their analysis have changed. Section 195.452(b) currently requires that operators identify each segment of their pipeline that could affect an HCA in the event of a release, but there is no explicit requirement that operators assure that their identification of covered segments remains current. As time goes by, the likelihood increases that factors considered in the original identification of covered segments may have changed. Construction activities or erosion near the pipeline could change local topography in a way that could cause product released in an accident to travel farther than initially analyzed. Changes in agricultural land use could also affect an operator's analysis of the distance released product could be expected to travel. Changes in the deployment of emergency response personnel could increase the time required to respond to a release and result in a release affecting a larger area if the original segment identification relied on emergency response in limiting the transport of released product. Therefore, PHMSA has determined that operators should periodically re-visit their initial analyses to determine whether they need updating; operators might identify new HCAs in subsequent analyses.

The change that PHMSA is adopting does not automatically require operators to re-perform their segment analyses. Rather, it requires operators to first identify the factors considered in their original analyses, determine whether those factors have changed, and consider whether any such change would likely affect the results of the original segment identification. If so, the operator is required to perform a new segment analysis to validate or change the endpoints of the segments affected by the change.

Further, Section 29 of the 2011 Pipeline Safety Act states that ''[i]n identifying and evaluating all potential threats to each pipeline segment pursuant to parts 192 and 195 of title 49, Code of Federal Regulations, an operator of a pipeline facility shall consider the seismicity of the area.'' While seismicity is already mentioned at several points in the IM program guidance provided in Appendix C of 49 CFR part 195, PHMSA is amending the PSR to further comply with Congress's directive by including an explicit reference to seismicity in the list of risk factors that must be considered in establishing assessment schedules (§ 195.452(e)), performing information analyses (§ 195.452(g)), and implementing preventive and mitigative measures (§ 195.452(i)) under the IM requirements.

Finally, the PIPES Act of 2016 contained two sections PHMSA identified as self-executing and that PHMSA could incorporate into the PSR without notice of public comment or previous proposed rulemaking. Section 14 of the PIPES Act of 2016 requires operators of hazardous liquid pipeline facilities to provide safety data sheets to the designated Federal On-Scene Coordinator and appropriate State and local emergency responders within 6 hours of a telephonic or electronic notice of the accident to the National Response Center. Section 25 of the PIPES Act of 2016 requires operators of underwater hazardous liquid pipeline facilities in HCAs that are not offshore pipeline facilities and that any portion of which are located at depths greater than 150 feet below the surface of the water to complete ILI assessments appropriate to the integrity threats specific to those pipelines no less frequently than once every 12 months. Furthermore, section 25 of the PIPES Act of 2016 requires that operators use pipeline route surveys, depth of cover surveys, pressure tests, ECDAs, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility, as necessary to assess the integrity of those pipelines on a schedule based on the risk that the pipeline facility poses to the HCA in which the facility is located. PHMSA is amending the PSR by codifying the statutory language of these provisions.

## III. Liquid Pipeline Advisory Committee Recommendations

The Liquid Pipeline Advisory Committee (LPAC) is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards, risk assessments, and safety policies for hazardous liquid pipelines. The Pipeline Advisory Committees (PAC) were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1–16) and the Federal Pipeline Safety Statutes (49 U.S.C. Chap. 601). Each committee consists of 15 members, with membership divided among the Federal and State agencies, the regulated industry, and the public.[37] The PACs advise PHMSA on the technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

On February 1, 2016, the LPAC met at the Hilton Arlington in Arlington, VA, to discuss this rulemaking. During the meeting, the LPAC considered the specific regulatory proposals of the NPRM and discussed various comments to the NPRM proposed by the pipeline industry, public interest groups, and government entities. To assist the LPAC in their deliberations, PHMSA presented a description and summary of the eight major issues in the NPRM and the comments received on those issues, as well as some sample regulatory text changes to foster discussion.

During the meeting, eight votes were taken: One vote on each major topic of the NPRM. For each major topic of the rule, the LPAC came to a consensus decision that the provisions of the rulemaking would be technically feasible, reasonable, cost-effective, and practicable, provided PHMSA made certain changes. The order the topics were discussed in, the changes the committee agreed upon, and the corresponding vote counts were as follows:

Gravity lines: In the NPRM, PHMSA proposed to subject gravity lines to reporting requirements for data gathering purposes, as there are currently no regulatory requirements for these lines and little data for potential regulatory decision-making purposes. The LPAC voted 9–1 that the NPRM, with respect to gravity lines, as published in the **Federal Register**, and the draft regulatory evaluation were technically feasible, reasonable, cost-

[37] Members from the general public include two members who have education, background, or experience in environmental protection or public safety. At least one of the five members must have education, background, or experience in risk assessment and cost-benefit analysis. No public member can have a significant interest in the pipeline, petroleum, or gas industry. At least one of the public members must have no financial interests in the pipeline, petroleum, or natural gas industries. See section 12(d), ''Liquid Pipeline Advisory Committee Charter—October 2018 to October 2020,'' *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/standards-rulemaking/pipeline/4396/lpac-charter-final-102418.pdf.*

effective, and practicable, if PHMSA made the following changes: Modify (shorten) the reporting form, require no National Pipeline Mapping System (NPMS) submissions, provide reporting exceptions for lower-risk pipelines (for example, intra-plant lines), allow a 1-year implementation period for annual reporting, and allow a 6-month implementation period for accident reporting.

The LPAC agreed that PHMSA should modify the reporting forms to gather only the data necessary for PHMSA to determine whether these lines need to be regulated in the future. LPAC members representing the pipeline industry requested that PHMSA consider reporting exceptions for lower-risk pipelines, such as intra-plant gravity lines. The same members also requested that any reporting requirements for gravity lines not include NPMS submissions, asserting that incorporating that data into a mapping system would be costly compared to the amount of risk these lines pose. LPAC members representing the public did not support these recommendations. They noted that as gravity line mileage is already limited, and the reporting requirement is only being used to gather data, excepting a subset of this limited mileage from reporting requirements would be counter-productive. Further, the public members strongly suggested that NPMS submissions be included for gravity lines, as location could be an important data point PHMSA could collect.

Gathering lines: In the NPRM, PHMSA proposed to collect information on all gathering lines and subject regulated gathering lines to periodic assessment and leak detection requirements. Much of the LPAC's discussion for gathering lines mirrored the topics discussed regarding gravity lines. During the discussion, PHMSA noted that under 49 U.S.C. 60132, only transmission-pipeline operators are required to submit mapping data for use in the NPMS. As a result, the LPAC removed language concerning NPMS submissions by gathering line operators. Ultimately, the committee voted 10–0 that the NPRM regarding gathering lines, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost effective, and practicable if PHMSA made the following changes: modify (shorten) the reporting form, allow a 1-year implementation period for annual reporting, and allow a 6-month implementation period for accident reporting.

Leak detection: In the NPRM, PHMSA proposed that all hazardous liquid pipelines transporting liquid in single phase (without gas in the liquid) include a leak detection system and have it operate and maintained per specified standards. Many commenters noted that there was no implementation period for PHMSA's proposed leak detection requirements. The LPAC proposed a 5-year implementation period for leak detection systems on existing lines and a 1-year implementation period for leak detection systems on new lines. The LPAC also recommended PHMSA not apply leak detection requirements to offshore gathering lines due to various technical challenges associated with flow monitoring and leak detecting. The LPAC voted unanimously that the NPRM, regarding leak detection, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost effective, and practicable if PHMSA made the following changes: Allow a 5-year implementation period for existing pipelines, allow a 1-year implementation period for new pipelines, and exempt offshore gathering lines from the leak detection requirements.

Clarifying other requirements: In the NPRM, PHMSA proposed to revise the IM requirements to specify additional pipeline attributes for operators to analyze when evaluating the integrity of pipelines in HCAs; to require the integration of all sources of information, including spatial relationships, when determining pipeline integrity; to require operators have a written IM plan prior to a specific pipeline's operation; and to require annual HCA segment identification and verification. During the meeting, the LPAC primarily discussed whether there should be a timeframe for implementing the specific data attributes and integrating all sources of information when determining pipeline integrity. Committee members representing the public argued that, because these provisions were clarifications of existing requirements, operators should have already been performing many of these actions, and an extended implementation period would not make sense. Several members who represented the public pushed for a 1-year implementation period. LPAC members representing the industry noted that developing data integration systems to a level that PHMSA would like could be expensive and time-consuming, possibly taking several years. Further, LPAC members representing industry noted that while a lot of data integration is already occurring in operators' IM programs, it could take some operators an extended period to adjust their software to incorporate all the items in PHMSA's proposed list. LPAC members representing industry proposed PHMSA allow operators a 3-year deadline from the rule's issuance to fully implement the proposed list of attributes. Ultimately, the LPAC voted 7–3 that the NPRM, regarding the data integration requirements, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost-effective, and practicable if operators begin implementing the requirements upon the rule's issuance with a deadline of 3 years for full implementation.

Inspections following extreme weather events: In the NPRM, PHMSA proposed requiring operators to perform inspections of pipelines that may have been affected by natural disasters or extreme weather events within 72 hours after the cessation of the event to better ensure that no conditions exist that could adversely affect the safe operation of that pipeline. The LPAC voted unanimously that the NPRM, as it relates to inspections following extreme weather events, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost-effective, and practicable, if PHMSA included the term ''landslide'' as a specific extreme weather event and qualify the term ''other similar events'' as it pertains to triggering the requirements of performing an inspection by tying the term to those events ''that the operator determines to have a significant likelihood of damage to infrastructure.'' Further, the LPAC recommended PHMSA clarify that the purpose of the inspection is to ''detect conditions that could adversely affect the safe operation of the pipeline'' and not ''ensure that no conditions exist that could adversely affect the safe operation of the pipeline.'' The LPAC also recommended PHMSA clarify that the inspection per these requirements would be an initial inspection, conducted within 72 hours of the area being safely accessible by personnel and equipment, to determine if any damage has occurred and whether additional assessments are necessary.

Periodic assessments in non-HCAs: In the NPRM, PHMSA proposed to require operators to assess non-HCA pipelines at least once every 10 years using ILI or other equivalent methods. The LPAC agreed on this requirement and wanted to ensure it was not more restrictive than the requirement for assessing lines

in HCAs. The LPAC voted unanimously that, regarding the provisions of the NPRM related to periodic assessments, the NPRM, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost-effective, and practicable if PHMSA ensured that the periodic assessment requirement applies to regulated pipelines that are not currently subject to the IM requirements at § 195.452, and made the methods operators use to assess non-HCA pipelines consistent with the methods operators use to assess HCA pipelines and allow operators to choose the appropriate tool for the appropriate threat.

Making all pipelines in HCAs able to accommodate ILI tools: In the NPRM, PHMSA proposed to require all pipelines in HCAs be capable of accommodating ILI tools within 20 years. The LPAC voted 9–1 that, regarding the provision of the rule requiring the use of ILI tools in all HCAs, the NPRM, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost-effective, and practicable provided PHMSA insert a phrase stating that an operator can also file a petition if it determines it would abandon or otherwise shut down a pipeline because of the compliance cost of the provision.

Repair criteria: In the NPRM, PHMSA proposed to make various changes to the existing repair criteria to reflect an improved prioritization of repairing abnormal pipeline conditions. The LPAC voted unanimously that, with regard to repair criteria for both HCA and non-HCA pipeline segments, the NPRM, as published in the **Federal Register**, and the draft regulatory evaluation are technically feasible, reasonable, cost-effective, and practicable if PHMSA considers allowing recognized engineering analyses to determine whether applicable dents and cracks are non-injurious and need no further investigation, and gives ''full and equal consideration to the industry comments that were discussed [at the meeting].'' [38] Those hazardous liquid industry comments provided at the LPAC meeting for PHMSA to consider were as follows:

Repair Criteria for both HCA and non-HCA pipeline segments:

1. Regarding ''Immediate'' conditions:

a. Include crack anomalies greater than 70 percent of wall thickness or the tool's maximum measurable depth if it is less than 70 percent;

b. Remove specific references to ''any indication'' of significant stress corrosion cracking (SCC) and selective seam weld corrosion (SSWC).

c. Allow for an industry recognized engineering analysis to determine those dents that are non-injurious and require no further investigation; and

d. Instead of addressing cracks and SSWC specifically, expand the various accepted failure models that identify an anomaly that does not have the remaining strength to exceed 1.1 times the MOP at the location of the anomaly, which should also include injurious cracks and SSWC.

2. Regarding 270-day conditions for HCAs and 18-month conditions for non-HCAs:

a. Revise the existing reference to cracks and include crack anomalies greater than 50 percent of wall thickness or the tool's maximum measurable depth if it is less than 50 percent;

b. Allow for an industry recognized engineering analysis to determine those dents that are non-injurious and require no further investigation; and

c. To address cracks and SSWC, expand the various accepted failure models that identify an anomaly that does not have the remaining strength to exceed 1.25 times the MOP at the location of the anomaly.

3. Add a ''Scheduled condition:''

a. Anomalies that do not meet the 270-day or the 18-month repair criteria but have the possibility to grow before the next segment inspection are subject to predictive modeling of remaining strength; and

b. Investigate in the years prior to the next inspection if the predicted burst pressure is less than 1.1 times the MOP at the location of the anomaly.

In this final rule, PHMSA considered the recommendations of the LPAC and adopted them as PHMSA deemed appropriate. To summarize, the major changes PHMSA has made in this rule that deviate from the LPAC recommendations are as follows: (1) PHMSA has added an additional requirement that operators notify the appropriate PHMSA Region Director when they are unable to inspect infrastructure impacted by extreme weather within 72 hours; (2) PHMSA has removed the phrase ''other similar event'' from the extreme weather inspection requirements; (3) PHMSA has changed a word in the regulatory text for non-HCA assessments, to provide that operators must assess ''line pipe'' (instead of ''pipelines defined under § 195.1'') not subject to the IM requirements at § 195.452; (4) PHMSA has restricted the non-HCA periodic assessment requirement to onshore, piggable, line pipe only, which removed the proposed assessment requirement for covered offshore lines and for regulated rural gathering lines; (5) PHMSA has removed the leak detection requirement for rural regulated gathering lines at § 195.11; and (6) PHMSA declined to move forward with the repair criteria and timelines as proposed for both HCAs and non-HCAs and has, instead, reverted to the existing non-IM repair language in § 195.401(b)(1) and the existing IM repair language at § 195.452(h). In the comments section, for each major topic of this final rule, PHMSA broadly discusses specific amendments proposed during the meeting and the corresponding discussion. PHMSA also discusses the instances where PHMSA did not adopt the specific recommendations of the LPAC.

## IV. Analysis of Comments and PHMSA Response

On October 13, 2015, PHMSA published an NPRM (80 FR 61609) proposing several amendments to 49 CFR part 195. The NPRM proposed amendments addressing the following areas:

(1) Reporting requirements for gravity lines.

(2) Reporting requirements for gathering lines.

(3) Inspections of pipelines following extreme weather events.

(4) Periodic assessments of pipelines not subject to IM.

(5) Repair criteria.

(6) Expanded use of leak detection systems.

(7) Increased use of in-line inspection tools.

(8) Clarifying other requirements.

Seventy organizations and individuals submitted comments in response to the NPRM, including public representatives, private citizens, industry service providers, individual pipeline operators, and trade associations representing pipeline operators. Some of the comments PHMSA received in response to the NPRM were comments beyond the scope or authority of the proposed regulations. The absence of amendments in this proceeding involving other pipeline safety issues (including several topics listed in the ANPRM) does not mean that PHMSA determined additional rules or amendments on other issues are not needed. Such issues may be the subject of other existing

[38] At the Advisory Committee meeting, member Craig Pierson, representing the pipeline industry, submitted for the members' consideration a written recommendation regarding repair criteria anomalies.

rulemaking proceedings or future rulemaking proceedings.

The remaining comments reflect a wide variety of views on the merits of particular sections of the NPRM. The substantive comments received on the NPRM are organized by topic below and are discussed in the appropriate section with PHMSA's response and resolution to those comments.

*A. Reporting Requirements for Gravity Lines*

1. PHMSA's Proposal

Gravity lines, pipelines that carry product by means of gravity, are currently exempt from PHMSA regulations. Many gravity lines are short and within tank farms or other pipeline facilities; however, some gravity lines are longer and can build up large amounts of pressure because they traverse areas with significant elevation changes, which could have significant consequences in the event of a release.

For PHMSA to effectively analyze gravity line safety performance and risk, PHMSA needs basic data about those pipelines. PHMSA has the statutory authority to gather data for all pipelines (49 U.S.C. 60117(b)), and that authority was not affected by any of the provisions in the 2011 Pipeline Safety Act. Accordingly, PHMSA proposed to add § 195.1(a)(5) to require that the operators of all gravity lines comply with requirements for submitting annual, safety-related condition, and incident reports.

2. Summary of Public Comment

PHMSA received comments from trade organizations, citizen groups, and individuals on the scope and format of the reporting requirements. To reduce the reporting burden, industry representatives (API–AOPL, the GPA Midstream Association (GPA) and Energy Transfer Partners (ETP)) recommended that PHMSA create a new abbreviated annual report with input from operators to separate the reporting of pipeline data for regulated pipelines and those not currently subject to 49 CFR part 195. Specifically, API noted that pipelines not currently covered under part 195 (gravity lines) are not subject to operator qualification, control room management, leak detection, and HCA requirements, and therefore those areas should be excluded from reporting. The Texas Pipeline Association requested that reporting be limited to annual and incident reports, a suggestion also supported by the ETP. API–AOPL commented that industry experience indicates that the cost and time burdens associated with the reporting requirements for gravity lines exceeded the cost estimate cited by PHMSA in the NPRM.

The Environmental Defense Center requested that the reporting requirements include the location, operation, condition, and history of the pipelines, and multiple citizen groups requested that GIS mapping be required for pipelines. In addition to GIS mapping information, the Western Organization of Resource Councils and the Alliance for Great Lakes et al. recommended that PHMSA also require pipeline operators to meet minimum safety standards for all pipelines, a comment echoed by numerous other citizen groups and individuals. These commenters also requested that inspection reports, notices of violation, and similar documents be made readily available to the public.

Trade organizations made additional comments regarding the applicability and implementation timeline for the reporting requirements. API–AOPL and other industry representatives requested that the data collection be narrowed, such that it would apply only to those gravity lines that could present a risk to the public, which: (1) Travel outside of facility boundaries for at least 1 mile, (2) operate at a specified minimum yield strength level of twenty percent or greater, and (3) are not otherwise exempted in § 195.1(b). On this same basis, Denbury Resources added a request to exempt $CO_2$ pipelines. Finally, API–AOPL requested that PHMSA extend the proposed implementation period to 1 year after the effective date of the final rule.

During the February 1, 2016, meeting, the LPAC recommended that PHMSA modify the NPRM to (1) require reporting from gravity pipeline operators using streamlined forms, (2) not require integration of gravity lines into NPMS, (3) provide exceptions for lower-risk pipelines (*e.g.,* intra-plant lines), and (4) set a 1-year implementation period for the annual reporting requirement and a 6-month implementation period for the accident reporting requirement.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the scope and timing of the requirements for gravity lines. After considering these comments and LPAC input, PHMSA is modifying the exception for gravity lines at § 195.1 as it pertains to reporting requirements. This change will allow PHMSA to require operators of gravity lines to report information annually, starting 1 year from the rule's effective date, and to report accidents and safety-related conditions starting 6 months from the rule's effective date. PHMSA considers these deadlines practicable in view of the limited scope of the information requested for these lines.

PHMSA focused collection on those data elements that will enable the agency to assess the risk posed by these lines and determine whether requirements that are more stringent are warranted in the future. To facilitate reporting and address commenters' concerns about providing clear instructions on data elements that operators must fill out for gravity lines, PHMSA has modified its existing reporting form to provide clear instructions, including skip patterns, for relevant sections. In response to API's specific suggestions regarding operator qualification, control room management, leak detection, and HCA reporting, these revisions exempted gravity lines from any fields that involve ''Could Affect HCA'' data. This targeting of the information collection request will reduce the burden associated with providing the information, as was requested by commenters. PHMSA recognizes that operators who are not currently submitting data will have to register with PHMSA to obtain an Operator Identification Number (OPID) under § 195.64, but the associated burden is minimal; PHMSA estimates that fewer than 10 operators would need to submit information for gravity lines. PHMSA estimates the total reporting burden at 66 hours per year, on average.

During the LPAC meeting, the committee reached consensus on requiring gravity line operators to report safety-related conditions. These conditions could lead to significant consequences and are important data points for PHMSA to determine whether additional gravity line regulations may be necessary in the future.

As explained previously, the purpose of the information collection is to support evaluation of the risk posed by gravity lines on the public. With this goal in mind, PHMSA is receptive to commenters who noted that pipelines located within the confines of a facility or in close proximity (within 1 mile) to a facility and do not cross a waterway currently used for commercial navigation pose a lower risk to the public and the environment. PHMSA has decided to exempt these lines from the reporting requirements. The language for this exception is similar to the language of an existing exception for low-stress pipelines at § 195.1.

Further safety-related condition reporting exceptions at § 195.55(b) will help minimize the reporting burdens for

operators. In the NPRM, PHMSA did not intend to propose requiring mapping of gravity lines at this time and therefore is finalizing the rule without this requirement. PHMSA understands commenters' concerns that gravity line NPMS data submissions could be costly and burdensome. However, as PHMSA is not requiring these submissions as a part of this final rule's reporting requirements, the cost and burden of these submissions were not and should not be considered as a part of the cost-benefit analysis. If PHMSA determines, following analysis of the data received on gravity lines, that mapping of these lines or expanding reporting applicability to lines exempted in this final rule would be beneficial to improve public safety or protect the environment, it may consider additional requirements in a future rulemaking.

Similarly, PHMSA is not requiring telephonic reporting of accidents involving gravity lines at this time but may reassess this requirement in a future rulemaking if analyses of the data suggest that doing so would enhance prevention, preparedness, and response to hazardous liquid releases from gravity lines.

Comments relating to public reporting and the reporting of specific pipeline attributes discussed issues that PHMSA did not propose in the NPRM and are therefore out-of-scope and could not be considered for this rulemaking. Similarly, comments discussing minimum safety standards be applied to gravity lines were also out-of-scope because they requested more stringent requirements than what PHMSA proposed in the NPRM.

*B. Reporting Requirements for Gathering Lines*

1. PHMSA's Proposal

In the NPRM, PHMSA also proposed to extend the reporting requirements of 49 CFR part 195 to all hazardous liquid gathering lines. Recent data indicates that PHMSA regulates less than 4,000 miles of the approximately 30,000 to 40,000 miles of onshore hazardous liquid gathering lines in the United States.[39] That means that about 90 percent of the onshore gathering line mileage is not currently subject to any minimum Federal pipeline safety standards. Congress also ordered the review of existing State and Federal regulations for hazardous liquid gathering lines in the Pipeline Safety Act of 2011, to prepare a report on whether any of the existing exceptions for these lines should be modified or repealed, and to determine whether hazardous liquid gathering lines located offshore or in the inlets of the Gulf of Mexico should be subjected to the same safety standards as all other hazardous liquid gathering lines. Based on the study titled ''Review of Existing Federal and State Regulations for Gas and Hazardous Liquid Gathering Lines'' [40] that was performed by the Oak Ridge National Laboratory and published on May 8, 2015, PHMSA proposed additional regulations to help ensure the safety of hazardous liquid gathering lines.

For PHMSA to effectively analyze safety performance and risk of gathering lines, we need basic data about those pipelines. PHMSA has statutory authority to gather data for all gathering lines (49 U.S.C. 60117(b)). Accordingly, PHMSA proposed to add § 195.1(a)(5) to require that the operators of all gathering lines (whether onshore, offshore, regulated, or unregulated) comply with requirements for submitting annual, safety-related condition, and incident reports.

2. Summary of Public Comment

PHMSA received comments on hazardous liquid gathering lines that echoed those for gravity lines. Citizen groups and individuals again requested that the requirements for these lines include GIS mapping and minimum safety standards; that the reporting include location, operation, condition, and history; and that inspection reports, notices of violation, and similar documents be made available to the public. Trade organizations again commented on compliance costs and recommended that the reporting requirement be limited to annual and incident reports with an abbreviated form, have a phase-in implementation over 1 year, and exempt lower-risk pipelines. Specifically, API noted again that, as rural gathering lines are not subject to operator qualification, control room management, leak detection, and HCA requirements, those areas should be excluded from reporting.

Trade organizations also made several additional recommendations related to the scope of applicability, the scope of requirements, and implementation. The Independent Petroleum Association of America (IPAA) commented that PHMSA exceeds its authority in requiring operators of gathering lines to submit annual, safety-related condition, and incident reports. The GPA and other organizations noted that PHMSA did not fully account for the burden increase and cost of the reporting requirements for gathering lines in the preliminary RIA. The GPA recommended that information requested under § 195.61 and § 195.64 be excluded from data collection. Numerous trade organizations identified accident reporting for these lines as costly and duplicative. The Louisiana Mid-Continent Oil and Gas Association (LMOGA) commented that most, if not all accident information requested for gathering lines is already required to be reported under other existing Federal and State regulations, and the GPA recommended that information collected through an abbreviated Annual Report could be paired with Accident Reporting on Form F 7000–1 (rev 7–2014). LMOGA also recommended that mapping of gathering lines not be required because of incidental environmental impacts on wetlands, permitting, and resource costs for teams to enter wetlands and track these lines.

The Offshore Operators Committee (OOC) requested that PHMSA make clear in the final rule that the agency's intent is not to have the proposed reporting requirements apply to gathering lines offshore within State waters that are currently not regulated by PHMSA or the Bureau of Safety and Environmental Enforcement (BSEE) or to other gathering lines that are regulated by BSEE.

Finally, commenters asked for implementation periods that ranged from 1 year (API–AOPL) to 10 years (Enterprise Products Partners) after the effective date of the rule.

During the meeting on February 1, 2016, the LPAC recommended that PHMSA modify the NPRM to (1) require reporting from gathering pipeline operators using streamlined forms and (2) set a 1-year implementation period for the annual reporting requirement and a 6-month implementation period for the accident reporting requirement.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters regarding the scope and timing of the requirements for gathering lines. Regarding the comment that the proposed reporting requirement of § 195.1(a)(5) exceeds PHMSA's statutory authority, PHMSA notes that the Federal Pipeline Safety Statutes state, in relevant part, ''[t]he Secretary may require owners and operators of gathering lines to provide the Secretary

[39] GAO–12–388: ''Pipeline Safety: Collecting Data and Sharing Information on Federally Unregulated Gathering Pipelines Could Help Enhance Safety,'' March 2012, pg. 7; *http://www.gao.gov/assets/590/589514.pdf.*

[40] *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/report_to_congress_on_gathering_lines.pdf.*

information pertinent to the Secretary's ability to make a determination as to whether and to what extent to regulate gathering lines.'' 49 U.S.C. 60117(b). PHMSA has determined that, in order to decide whether and to what extent to regulate gathering lines, as permitted by Congress, PHMSA requires pertinent information about those pipelines, including elements of the data contained in annual, safety-related condition, and incident reports. With this reporting requirement, PHMSA is not encroaching on the States' regulatory authority, nor creating new jurisdiction. Rather, PHMSA is collecting pertinent information to determine if future regulation is necessary for the statutory purpose of promoting pipeline safety.

More specifically, PHMSA is collecting items in the annual report that primarily include the mileage count for those gathering lines currently unregulated, the diameters of those lines, and whether they are operating at greater or less than 20 percent SMYS. The goal of collecting this specific information is to provide PHMSA with a better understanding of the scope of the Nation's gathering pipeline infrastructure. As previously stated, recent data indicates PHMSA regulates only approximately 4,000 miles of the estimated 30,000 to 40,000 miles of onshore hazardous liquid gathering lines in the United States. That means that as much as 90 percent of the onshore gathering line mileage is not currently subject to any minimum Federal pipeline safety standards, and little is known about that mileage.

In requiring accident reports for otherwise unregulated gathering lines, PHMSA is collecting data that includes the underlying cause for the accident, where the accident was located and how it was reported to the operator, and a value for any property damage caused. This data will be essential to understanding and managing risk. PHMSA uses information reported by pipeline operators to identify trends, provide performance measures, and understand the causes and consequences of pipeline incidents. Reporting requirements are in place for all pipelines except for the gravity and gathering pipelines addressed by this final rule. Each year, the U.S. Coast Guard's National Response Center receives several notifications of hazardous liquid releases involving ''gathering lines,'' but details on these releases are not sufficient to understand the factors that contributed to the releases and the damages, or to evaluate whether the lines involved are gathering lines over which PHMSA has jurisdiction.[41] The reporting requirements for gathering lines will help PHMSA have a more complete understanding of the risks these lines may pose.

PHMSA notes that one of its challenges is to understand and target risk, which requires a systematic approach to risk management, including a ''comprehensive understanding of the factors contributing to risk and the ability to focus resources in those areas that pose the greatest risk.'' One of PHMSA's strategies for dealing with this challenge is to improve data collection and analysis, collect the right data to evaluate risks from unregulated entities, and improve the transparency of information and public awareness of pipeline and hazardous materials safety issues. The long-term benefits of having better information may include reducing incidents, enhancing incident response, and increasing public confidence.

As such, PHMSA is finalizing the requirement for operators of gathering lines to report information annually, starting 1 year from the rule's effective date, and to report accidents and safety-related conditions starting 6 months from the final rule's effective date. PHMSA considers these deadlines practicable in view of the scope of the information requested. To facilitate reporting and address commenters' concerns about providing clear instructions on data elements that must be filled out for gathering lines, PHMSA has modified its existing reporting form to provide clear instructions, including skip patterns, on the relevant sections that gathering line operators must fill out. In response to API's specific suggestions regarding operator qualification, control room management, leak detection, and HCA reporting, these revisions exempted rural gathering lines from any fields that involve ''Could Affect HCA'' data. PHMSA recognizes that operators who are not currently submitting data will have to register for an identifier, but PHMSA expects the burden on operators to do this is small. In its analysis, PHMSA assumed that a majority of the reporting of currently unregulated gathering lines would be done by operators who already have OPIDs. PHMSA estimates that, at a minimum, approximately 20 operators will need to submit information for gathering lines for the first time, and another 56 operators will add information about gathering lines to their existing annual reports. PHMSA estimates the total reporting burden at 402 hours per year, on average. See the revised RIA accompanying the final rule for additional detail.

Some commenters requested that PHMSA clarify whether these reporting requirements applied to offshore gathering lines in State waters. As the purpose of the information collection is to evaluate the public risk posed by gathering lines, PHMSA found it appropriate to extend the reporting requirements to certain offshore gathering lines in State waters.

In its proposal, PHMSA did not intend to require mapping or NPMS submissions for gathering lines. Under 49 U.S.C. 60132, only transmission line operators are required to submit mapping data for use in the NPMS; PHMSA does not have the explicit authority to collect NPMS data for gathering lines. PHMSA is therefore finalizing the rule without imposing this requirement on operators of gathering lines.

Similar to requirements for gravity lines, PHMSA is not requiring telephonic reporting of accidents involving gathering lines to PHMSA at this time since such a requirement would not support the purpose of this data collection effort, which is to enable PHMSA to evaluate risk over time for potential future action. PHMSA notes that operators must still report spills to the National Response Center and other relevant authorities. PHMSA will reassess the utility of requiring notification for incidents involving gathering lines in a future rulemaking if the analyses suggest that such notifications would enhance prevention, preparedness, and response to hazardous liquid releases from gathering lines.

Certain commenters also stated their belief that PHMSA neglected to account for the costs and burden associated with the initial compiling of the data needed to complete the forms. In many cases, the commenters suggested, information may not have been recorded or may not have been provided during mergers or acquisitions. PHMSA noted in the RIA that it expects operators to have the requested information readily available, as it is essential for pipeline operation and safety. PHMSA allows operators to enter ''unknown'' when values cannot be determined for certain data fields. In the burden estimate, PHMSA allotted time for operators to compile the proper data and organize it into the requested format. See the RIA for further details. PHMSA did not impose minimum safety standards on currently unregulated gathering lines, as some

[41] NRC data for 2010 through 2014 show 116 incidents categorized as ''pipeline'' incidents and that specifically include the term ''gathering'' in the incident description. Many more pipeline incidents could also be from gathering lines.

commenters suggested, because the agency currently does not have data to analyze what risk, if any, those lines may pose to surrounding communities and environments. However, under these provisions, PHMSA will gather data on unregulated gathering lines and will use that data to determine whether additional safety regulations may be necessary.

*C. Pipelines Affected by Extreme Weather and Natural Disasters*

1. PHMSA's Proposal

Recent events demonstrate the importance of ensuring that our Nation's waterways are adequately protected in the event of a natural disaster or extreme weather. PHMSA is aware that responsible operators might do such inspections; however, because it is not a requirement, some operators do not. Therefore, PHMSA proposed to require that operators perform an additional inspection within 72 hours after the cessation of an extreme weather event such as a hurricane or flood, an earthquake, a natural disaster, or other similar event.

Specifically, PHMSA proposed that an operator must inspect all potentially affected pipeline facilities after an extreme weather event to help ensure that no conditions exist that could adversely affect the safe operation of that pipeline. The operator would be required to consider the nature of the event and the physical characteristics, operating conditions, location, and prior history of the affected pipeline in determining the appropriate method for performing the inspection required. The initial inspection must occur within 72 hours after the cessation of the event, defined as the point in time when the affected area can be safely accessed by available personnel and equipment required to perform the inspection. Based on PHMSA's experience and coordination with operators following natural disasters, PHMSA has found that 72 hours is reasonable and achievable in most cases. If an operator finds an adverse condition, the operator must take appropriate remedial action to best ensure the safe operation of a pipeline based on the information obtained as a result of performing the inspection. PHMSA specifically asked for comments on how operators currently respond to these events, what type of events are encountered, and if a 72-hour response time is reasonable.

2. Summary of Public Comment

Some trade organizations recommended that certain requirements be eliminated altogether or consolidated to reduce what they considered to be duplicative of existing emergency planning requirements in § 195.402(e)(4).

Commenters were nearly unanimous in requesting that PHMSA clarify the definition of extreme weather event, the 72-hour timeline, and the timeline for mitigating or repairing anomalies. The GPA recommended that PHMSA either define exactly which events require response and inspection or establish performance expectations without partially defining the criteria, while the County of Santa Barbara recommended that the proposed regulations specify a threshold at which action would be required. Congresswoman Lois Capps (California) recommended that PHMSA include definitions and/or citations of existing definitions for qualifying events and the responsible party for such a determination. Congresswoman Capps also recommended that PHMSA clarify the terminology for an ''appropriate method for performing the inspection'' after the event.

In addition to clarification of the definition of extreme weather event, trade groups also requested clarification of the 72-hour timeline following an extreme weather event, including how they would determine the cessation of the event, what appropriate action they would need to take following an event, and how to address the possibility of continued danger facing personnel or issues with availability of personnel and resources following an event.

API–AOPL recommended that PHMSA define cessation as the point in time when no further threats to personnel safety or equipment exist in the affected area, allowing for safe access by pipeline personnel and equipment. They also recommended that the 72-hour window commence only once personnel and equipment could safely access the affected area.

Citizen groups and individuals requested that operators be required to proactively address known risks and vulnerabilities in advance of an extreme weather event. For example, one organization recommended additional requirements to identify areas that are particularly vulnerable to extreme weather events or natural disasters, (*e.g.,* stream crossings, and to develop proactive preventive measures.) The Alaska Wilderness League et al. recommended mandatory prevention measures that include shutting down pipeline operations in case of an imminent flood to prevent spills such as the 2011 Exxon Mobil Yellowstone River spill. Citizen groups also requested immediate reporting to PHMSA when remedial action is required and that this information be made publicly available. The Environmental Defense Center requested that PHMSA provide specific, enforceable requirements for shutdown or other remedial action should an inspection reveal damage or anomalies, and that PHMSA clarify the type of events covered and the inspection methodology required.

Finally, the OOC recommended that PHMSA coordinate with BSEE and the U.S. Coast Guard for activities that occur after hurricanes.

During the meeting on February 1, 2016, the LPAC recommended that PHMSA modify the NPRM to (1) include landslides as an extreme weather event, (2) clarify that other similar events are those likely to damage infrastructure, and (3) require operators to inspect all potentially affected pipeline facilities to detect conditions that could adversely affect the safe operation of the pipeline. The LPAC also recommended that PHMSA modify the language regarding the inspection method to require operators to consider the nature of the event and the physical characteristics, operating conditions, location, and prior history of the affected pipeline in determining the appropriate method for performing the initial inspection to determine damage and the need for additional assessments. Finally, the LPAC recommended that PHMSA clarify that the inspection must commence within 72 hours after the cessation of the event, which is defined as the point in time when the affected area can be safely accessed by the personnel and equipment, accounting for personnel and equipment availability.

3. PHMSA Response

PHMSA disagrees with the comments stating the provisions at § 195.414 are unnecessary and duplicate operation and maintenance (O&M) manual requirements already contained in the response plan requirements under § 195.402. While § 195.402 does require that operators include certain ongoing monitoring measures in their O&M manuals, the proposed § 195.414 is much more specific in requiring that operators take appropriate remedial action to best ensure the safe operation of a pipeline based on the information obtained as a result of performing the post-event inspection required under paragraph (a) of this section. This will ensure that operators take the prescribed actions; having measures described in an operator's O&M manual, as previously required, is not equivalent to action. PHMSA maintains that separate and more specific requirements are

warranted to best ensure public safety and environmental protection following extreme events. Additionally, PHMSA notes that reporting is coordinated with BSEE, the U.S. Coast Guard, and other agencies under existing notification procedures if the assessment determines there was a release involving their areas of responsibility. Both 49 CFR parts 194 and 195 require operators to report spills to the National Response Center.

PHMSA appreciates the feedback provided by the commenters regarding the need for greater clarity in the definition of extreme events and natural disasters and expectations on the timing and scope of post-event inspections. In developing the requirements, PHMSA sought to balance being explicit regarding the types of events that could increase the risk of a release and therefore require inspections, with providing sufficient flexibility to account for diverse geographical and pipeline design factors. PHMSA recognizes that the language recommended by the LPAC is useful in striking this balance and adopted most its revisions in the final rule under §§ 195.414(a), (b), and (c). PHMSA is removing the language ''other similar event'' as PHMSA found the phrase to be vague and unnecessary to accomplish the goals of the provision but is maintaining the LPAC's recommended language regarding the ''likelihood to damage infrastructure.'' Per the finalized requirement, operators must inspect all potentially affected pipeline facilities following extreme weather events or natural disasters with the likelihood of damaging infrastructure, such as named hurricanes or tropical storms; floods that exceed the high-water banks of rivers, shorelines or creeks; and landslides or earthquakes occurring within the area of a pipeline, in order to detect conditions that could adversely affect the safe operation of that pipeline. As discussed earlier in this document, the conditions that trigger this requirement are those that have the potential to cause river scour, soil subsidence, or earth movement, all of which can subject a pipeline to additional external loads and forces and cause the pipeline to fail. Pipeline operators are already required to understand and analyze the impact such weather events and natural disasters may have on their systems based the physical characteristics, operating conditions, location, and prior history of susceptible pipelines.

PHMSA retained the remedial actions unchanged from the proposal. While PHMSA intends for operators to inspect pipelines as soon as possible after an event ends, PHMSA also agrees with commenters that personnel safety is paramount. Accordingly, PHMSA clarified that the cessation of the event occurs as soon as it is safe for personnel and equipment to access the area. Operators are responsible for determining when each site is safe enough for entry.

In response to commenters who sought greater flexibility in the timing of the inspections by leaving it up to the operators, PHMSA disagrees and maintains that setting clear and consistent timelines is essential to ensuring that all operators detect and address any issues promptly. The final rule does provide a fallback to operators who must delay the start of actions beyond this time due to availability of equipment, but these operators must notify the Regional Director. This addition to the LPAC-approved language allows operators to retain flexibility due to unavailable equipment, while ensuring accountability and prompt action. PHMSA considers 72 hours to be a reasonable period for mobilizing personnel and equipment following an event.

In response to commenters who expressed concerns that inspections cannot be reasonably be completed within the 72-hour window, PHMSA notes that the proposal did not require completion of the inspections within 72 hours, and neither does the final rule; PHMSA recognizes that this needed to be clarified in the rule text and has done so in the final rule. The final rule accordingly describes the actions it expects operators to perform, starting within 72 hours after the cessation of the event. Recognizing that some actions will need to be site-specific, PHMSA provides flexibility to operators to determine the measures that are appropriate to the event, pipeline design, and circumstances.

PHMSA is receptive to the recommendation that operators should take precautionary measures to minimize exposure in advance of and during an extreme event (*e.g.,* reducing operating pressure or shutting down a pipeline), and notes that the current IM regulations require operators to know and understand risks to their system, which includes the threat of extreme events such as flooding or wind damage. To execute their IM programs and assessments on non-HCA lines as per this final rule, operators will need to have pipeline system information to address risks to their systems. Operators will use the information they have gathered on their entire pipeline system to monitor conditions and determine any anticipated risks to their pipelines, including extreme weather events. Given that the existing IM regulations require preventive and mitigative measures for HCAs, which often include river crossings, it is appropriate for this section to address post-natural disaster inspections for damage specifically.

*D. Periodic Assessment of Pipelines Not Subject to IM*

1. PHMSA's Proposal

PHMSA proposed to require integrity assessments for pipeline segments in non-HCAs. PHMSA believes that expanded assessment of non-HCA pipeline segments areas will provide operators with valuable information they may not have collected if regulations were not in place; such a requirement would help ensure prompt detection and remediation of corrosion and other deformation anomalies in all locations, not just HCAs. Specifically, the proposed § 195.416 would require operators to assess non-HCA (non-IM) pipeline segments with an ILI tool at least once every 10 years, which allows operators to prioritize HCA assessments. PHMSA proposed to allow other assessment methods if an operator provides OPS with prior written notice that a pipeline is not capable of accommodating an ILI tool. Such alternative technologies would include hydrostatic pressure testing or appropriate forms of direct assessment.

Although imposing the full set of IM requirements in § 195.452 on non-HCA pipeline segments was not proposed, operators would be required to comply with the other provisions in 49 CFR part 195 in implementing the requirements in § 195.416. That includes having appropriate provisions for performing periodic assessments and any resulting repairs in an operator's procedural manual (see § 195.402); adhering to the recordkeeping provisions for inspections, tests, and repairs (see § 195.404); and taking appropriate remedial action under proposed § 195.422, which, based on the existing IM repair criteria at § 195.452(h), identified specific types of anomalies and the timeframes by which they must be remediated. Operators would also follow the requirements for ''discovery of condition,'' where the discovery of a condition occurs when an operator has adequate information to determine that a condition exists. The operator must promptly, but no later than 180 days after an assessment, obtain sufficient information about a condition to determine whether the condition could adversely affect the safe operation of the pipeline, unless 180 days is impracticable as determined by

PHMSA. PHMSA sought public comment on the alternatives it considered under this specific proposal and on quantifying these alternatives in the regulatory impact analysis.

2. Summary of Public Comment

Trade organizations offered comments and language revisions on the methods and requirements included in the periodic assessments, implementation period, inspection intervals, and exemptions for lower risk pipelines. Enterprise Products Partners requested that operators be afforded the latitude they have under current IM regulations to determine the actual threats to pipeline integrity present on a given segment and to tailor their integrity assessment program accordingly. For instance, Enterprise suggested that PHMSA revise the proposal to clarify that a crack tool is not required for every ILI assessment, stating specifically that ''an additional ILI crack tool is beneficial only when there is an identified threat to the pipeline segment that could result in cracks, such as cyclic fatigue. Yet PHMSA proposes to require a [crack tool] in all circumstances and on every pipeline segment.'' Other trade organizations echoed this and requested that PHMSA incorporate alternatives to ILI tools for periodic assessments into the rule. Trade organizations also recommended that PHMSA ensure the rule is consistent with existing IM rules, including the reassessment intervals and implementation period. The Texas Pipeline Association requested that reassessment intervals be based on sound engineering judgement and industry consensus standards. Finally, trade organizations recommend that PHMSA limit and specify the type of pipelines to which the requirement would apply, with some commenters requesting specific exemptions for short lines and $CO_2$ pipelines. API–AOPL requested that PHMSA clarify that operators would not need to run assessments on idle or out-of-service pipelines. API–AOPL also requested that PHMSA clarify that it intends for the requirements to include transmission lines only. Finally, the GPA requested that PHMSA rely on American Society of Nondestructive Testing (ASNT) ILI PQ as the standard for data analysis rather than the current language ''qualified by knowledge, training, and experience.'' The GPA submitted additional comments to PHMSA on March 24, 2016, expressing concerns that PHMSA misrepresented aspects of this proposal during the LPAC meeting. In the LPAC meeting the GPA claimed that PHMSA asserted that currently regulated gathering lines are subject to assessments; the GPA believes that this statement was inaccurate and led to a vote by the committee that was not based on accurate facts. Further, the GPA suggested that ''it is possible there are gathering lines in non-rural areas which do not meet the Census Bureau definitions for high or other population areas. Thus, when properly applying the regulations as currently written, there are gathering lines, which are regulated by PHMSA and its state partners for safety purposes that are not subject to periodic assessments.''

Trade organizations also commented on the cost of expanding requirements for pipelines located outside of HCAs. The Texas Pipeline Association commented that raising the level of regulation on facilities outside of HCAs will redirect resources from high-risk areas to lower-risk areas. They requested that PHMSA consider the costs to operators of the proposed changes related to facilities outside of HCAs. The OOC also commented that offshore lines present unique challenges that make them ill-fitted for ILI technology and hydrotests.

Other groups and individuals commented on the methods and requirements included in the periodic assessments, inspection intervals, and additional requirements. A 5-year inspection interval was generally favored by citizen groups and individuals, including the Alliance for Great Lakes Et al. Congresswoman Capps highlighted that a 3-year interval between inspections had proven to be inadequate to detect corrosion that caused the Plains All American oil pipeline rupture in May 2015. These commenters also requested clarification that alternative methods of assessment must account for inspection along the entire pipeline both inside and outside HCAs and expressed concern with waivers for ILI tools or the use of direct assessment.

The NTSB requested that PHMSA harmonize the gas and liquid regulations to the maximum extent practicable and cautioned that direct assessment is an ineffective alternative technology for IM when applying the 10-year assessment requirement for the integrity of an entire pipeline. They recommended that the IM program encompass a broad range of available IM technologies including, but not limited to, ILI, magnetic flux leakage, ultrasonic testing, and tests directed at determining the integrity of the pipe coating.

Finally, some citizen groups and individuals requested that inspection reports be made publicly available and that operators be required to submit primary inspection results and data to PHMSA. The Environmental Defense Center recommended third-party verification of inspection reports based on corrosion underreporting. These groups also requested risk assessment on non-IM pipelines and annual inspections for all federally regulated hazardous liquid pipelines.

During the February 1, 2016, meeting, the LPAC recommended PHMSA modify the NPRM to clarify its application to pipelines regulated under § 195.1 that are not subject to the IM requirements in § 195.452. The LPAC also made additional language recommendations to clarify the method of the assessment when ILI tools are impracticable, including pressure tests, external corrosion direct assessment, or other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters. PHMSA notes that the LPAC, with minor tweaks, found the provision for requiring operators to perform these periodic assessments on all covered pipelines not subject to the integrity management requirements under § 195.452 to be a cost-effective, practicable, and technically feasible provision.

However, several commenters noted challenges and cost-benefit concerns with assessing offshore lines and regulated rural gathering lines as a part of this proposal. In this final rule, PHMSA is limiting the assessment requirement to onshore, non-HCA, non-gathering lines that can accommodate inline inspection tools.

Under the current regulations, PHMSA notes that approximately 45 percent of hazardous liquid pipelines are required to be assessed per the IM requirements by being located within an HCA or because they can affect an HCA. PHMSA has determined that, through this provision, most onshore non-HCA mileage will be assessed at a consistent rate. Further, as pipeline operators continue to replace pipe through modernization projects and repairs, PHMSA assumes that virtually all the Nation's pipeline mileage will be piggable within the next few decades.

In the NPRM, PHMSA did not intend for the requirements applicable to lines outside of HCAs to be more stringent than those applicable to lines in HCAs. PHMSA agreed with the commenters and the LPAC that it is appropriate to provide the same flexibility for the assessment of lines outside of HCAs as

lines within HCAs, but PHMSA notes that many of these concerns appeared to be in response to PHMSA's requirement to assess all non-HCA lines, even ones that were not readily piggable. As discussed above, this final rule's non-HCA assessment requirement now applies to piggable, onshore transmission line only. This final rule does allow operators to use pressure testing, direct assessment, or other technology in cases when in-line inspections are impracticable. PHMSA has determined that ILI tools may not be available for all pipe diameters and threats being assessed, and providing operators the ability to use these other assessment methods on piggable lines is appropriate at this time.

Further, per the comments received from commenters, including API and Enterprise, related to the use of crack tools, PHMSA has revised the final rule, at both §§ 195.416 and 195.452, to require crack tools only when there is an identified or probable risk or threat supporting their use. For example, if operators have identified a pipeline segment with identified or probable risks or threats related to corrosion and deformation anomalies, including dents, gouges, or grooves, then the operator must assess that segment with a tool capable of detecting those anomalies. Similarly, operators should assess pipeline segments with an identified or probable risk or threat related to cracks using a tool capable of detecting crack anomalies. Essentially, operators should always be selecting an appropriate assessment tool based on the pertinent threats to a given pipeline segment that have been identified by an operator's risk assessment. An operator's risk assessment should always be driving its integrity assessments and the integrity management program. An operator cannot properly maintain its pipeline if it does not know what threats to which the pipeline is susceptible to and which tools the company should be selecting to assess those threats. These threats can include, but are not limited to, pipe that may have manufacturing defects or have otherwise experienced in-service incidents.

Under the existing requirements of § 195.452(c)(1) (after which PHMSA modeled the new assessment requirements in § 195.416), operators must select an assessment method capable of assessing seam integrity and of detecting corrosion and deformation anomalies if the applicable pipe is low-frequency ERW pipe or lap-welded pipe susceptible to longitudinal seam failure. PHMSA has interpreted and intended the phrase ''susceptible to seam failure'' to apply to both low-frequency ERW pipe and lap-welded pipe. In this final rule, PHMSA has expanded the assessment provisions to require operators to use a tool or tools capable of assessing seam integrity, cracking, and of detecting corrosion and deformation anomalies on low-frequency ERW pipe, pipe with a seam factor less than 1.0 (as defined in § 195.106(e)) [42])), or lap-welded pipe susceptible to longitudinal seam failure. Certain stakeholders may interpret this requirement to mean that these tools will need to be run on every segment of low-frequency ERW pipe, pipe with a seam factor of less than 1.0, or lap-welded pipe. However, PHMSA only explicitly requires the use of these tools for segments of low-frequency ERW pipe, pipe with a seam factor less than 1.0, or lap-welded pipe when these types of pipe are determined by an operator to be susceptible to longitudinal seam failure based on excavation findings, examinations, leaks, failures, pressure tests, inline inspections, other operating history, and the manufacturing history of the pipe vintage and its history of seam leaks and failures.

Similarly, PHMSA found that the proposed requirements for ''discovery of condition'' under § 195.416 were more stringent than the revisions proposed for § 195.452. To be consistent with the revised requirements under § 195.452 regarding the discovery of condition, the operator has 180 days to obtain sufficient information on conditions and make the required determinations, unless the operator can demonstrate that the 180-day timeframe is impracticable. In cases where an operator does not have adequate information within 180 days following an assessment, pipeline operators must notify PHMSA and provide an expected date when that information will become available. These revisions will provide consistency for the discovery of condition across all regulated HCA and non-HCA lines.

PHMSA also agreed with the commenters and the LPAC that it is necessary to clarify which pipelines fall under the non-HCA assessment requirements. However, upon further review, PHMSA found that adopting the LPAC-recommended language for § 195.416(a), by clarifying application of this requirement to pipelines regulated under § 195.1 that are not subject to the IM requirements in § 195.452, would extend this requirement beyond PHMSA's or the LPAC's intent and would cover facilities not previously intended, such as pump stations. Therefore, instead of strictly adopting the language proposed by the LPAC, PHMSA is instead specifying that these requirements apply to onshore, piggable line pipe not covered under the IM requirements, including the relevant line pipe within pump stations, but not other appurtenances and components like metering stations, tanks, etc. Further, PHMSA is not requiring IM 5-year assessments but is requiring operators to continue the implementation of the preventive and mitigative measures under IM (§ 195.452(i)) for appurtenances, pumps, tanks, etc., for these facilities that could affect a HCA. PHMSA believes this clarification captures the intent of the LPAC members.

In response to the GPA's suggestion for an alternative standard for data analysis, PHMSA's existing process for data analysis has been through a rigorous rulemaking process. PHMSA is not incorporating alternative standards into this rule making that were not included at an earlier rulemaking stage and were not subject to public comment.

Regarding the GPA's other concern as to whether PHMSA provided the LPAC with inaccurate information concerning the extent to which operators are already required to perform assessments on gathering lines versus the new assessment requirements PHMSA was proposing in the NPRM, PHMSA notes that on pages 180 and 181 of the LPAC meeting transcript PHMSA clearly states that it is proposing subjecting currently regulated rural gathering lines to periodic assessment and repair requirements in §§ 195.416 and 195.422, saying, ''When it comes to the gathering lines that we don't currently regulate, [that] the regulations don't currently address, the only requirements we're applying will be the reporting requirements that we discussed prior. In the [NPRM], when it came to regulated rural gathering lines, we proposed to subject them to the assessment requirements in [§ 195.]416 and [§ 195.]422. There's actually a proposal in the NPRM to link the two sections together, but it would not require that lines that are currently, today, not regulated to be assessed.'' The statement by PHMSA at the LPAC meeting that the GPA questions states that regulated rural gathering lines have an assessment requirement in the NPRM as opposed to currently unregulated gathering lines, which do not. Further discussion and voting at the LPAC meeting indicated that the committee members fully

[42] 49 CFR 195.106(e) has seam factors for pipe seams that need to be de-rated for maximum operating pressure determination. A de-rated seam factor would be below 1.0 and include furnace lap welded and furnace butt welded pipe seams.

understood PHMSA's proposal, with committee members clarifying the definition by asking it to be revised to ''transmission and regulated gathering lines'' and noting ''there's clarity with this [definition] now.''

Regarding the GPA's other comment on the possibility of the existence of gathering lines in non-rural areas that are not assessed, PHMSA notes this is incorrect. Currently, the only regulated gathering lines that are not subject to assessment requirements are regulated rural gathering lines, which, per their name, are in rural areas. Under existing § 195.1(a)(4), any onshore gathering lines located in non-rural areas and gathering lines located in Gulf of Mexico inlets are covered by 49 CFR part 195, and if these gathering lines are within HCAs or could affect HCAs, they are subject to the full IM program requirements, including integrity assessments, under the current § 195.452. As defined in § 195.2, a ''rural area'' means ''outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development.'' To exist outside of a ''rural area'' as that term is defined under § 195.2 (*i.e.,* a ''non-rural'' pipeline), a pipeline would have to be inside (rather than outside) the limits of any incorporated or unincorporated city, town, etc. Per the definition of an HCA at § 195.450, a pipeline in such an area would be in an HCA, and therefore would be regulated and subject to assessment requirements. Therefore, with the exception of regulated rural gathering lines, operators should be assessing all other regulated gathering lines per their IM programs.

PHMSA does not agree with API–AOPL that clarification is needed in the rule on the issue of ''idle'' pipelines. The Federal PSR list only two statuses for a pipeline: (1) In-service/active; or (2) ''abandoned,'' which the PSR defines as ''permanently removed from service.'' Although operators frequently refer to a pipeline that is not being actively used as ''idle,'' PHMSA has no current operational designation for an ''idle'' line. Unless they are abandoned in accordance with applicable procedures, pipelines that are not currently in use must meet all the requirements of the Federal PSR, including compliance with IM regulations if those pipelines are in HCAs. On March 17, 2014, a pipeline leaked crude oil into a highly populated suburb of Los Angeles, CA (Wilmington, CA), releasing an estimated 1,200 gallons of oil.[43] The pipeline was never purged and filled with inert material as per the operator's procedures required by the regulations, and the operator (who bought the pipeline from another operator), believed the pipeline was ''abandoned.'' This demonstrates the fact that pipelines that have been ''idled'' can still present a safety risk and must be treated as active pipelines. Further, as operators can restart ''idle'' lines and transport product later, it is important that operators maintain these lines to the same level of safety and standards as an active, in-service line. Accordingly, PHMSA expects operators of ''idle'' lines to perform assessments and adhere to all the applicable regulations based on the line's location.

PHMSA considered the requests it received to make inspection reports for non-HCA lines publicly available and to require third-party inspection report verification. PHMSA determined that promulgating those requirements would make assessing non-HCA lines more burdensome than assessing HCA lines.

Regarding requests that PHMSA require non-HCA inspections at 5-year intervals to ensure a larger number of populations and properties are protected, PHMSA notes that setting the non-HCA assessment interval to 5 years would make it equal to that for lines in HCAs. Lowering the non-HCA assessment period to any time below 5 years would make it more stringent than the requirement for HCAs and would not allow operators to prioritize those higher-consequence areas first. Similarly, requiring a yearly inspection of all hazardous liquid pipelines, as some commenters suggested, would be overly burdensome and would work against risk-based prioritization.

Many commenters also requested that PHMSA require operators to perform risk assessments on non-IM pipelines. As discussed in the previous section on extreme weather events, PHMSA expects operators will need to have a certain amount of information on their HCA and non-HCA pipelines, including the environment in which they operate, for them to properly assess risk and the current condition of their pipeline system and to select the proper tool(s) for an adequate threat analysis. Operators cannot properly perform assessments if they do not know or understand the ''as-is'' state of their pipeline and any potential or actual threats. This information is required to comply with § 195.401(a), which states that no operator may operate or maintain its pipeline systems at a level of safety lower than that required by subpart F of 49 CFR part 195 and the procedures it is required to establish under § 195.402(a). Therefore, PHMSA expects operators will already be performing a level of risk analysis on non-HCA lines as well as HCA lines.

*E. IM and Non-IM Repair Criteria*

1.a PHMSA's Proposal for § 195.452 (IM Repairs)

In the NPRM, PHMSA proposed modifying criteria in § 195.452(h) for IM repairs to:

- Categorize bottom-side dents with stress risers, pipe with significant stress corrosion cracking, and pipe with selective seam weld corrosion as immediate repair conditions;
- Require immediate repairs whenever the calculated burst pressure is less than 1.1 times MOP;
- Eliminate the 60-day and 180-day repair categories; and
- Establish a new, consolidated 270-day repair category.

1.b PHMSA's Proposal for § 195.422 (Non-IM Repairs)

PHMSA also proposed to amend the requirements in § 195.422 for performing non-IM repairs by:

- Applying the criteria in the immediate repair category in § 195.452(h); and
- Establishing an 18-month repair category for hazardous liquid pipelines that are not subject to IM requirements.

2. Summary of Public Comment

Citizen groups and individuals expressed concern with the changes to the repair timeline categories. The Alliance for Great Lakes et al. requested that PHMSA maintain the 180-day repair timeframe for all repairs that are not classified as immediate, and the Pipeline Safety Trust (PST) did not see justification for the 18-month and ''reasonable'' time frames added for repairing pipelines outside of HCAs. API–AOPL requested a reasonable timeframe to address repairs in offshore pipelines that considers the type of repair and permit that might be involved. ETP recommended that PHMSA change the 270-day and 18-month criteria to 1-year and 2-year criteria to assist operators with planning, budgeting, and scheduling.

Enterprise Products Partners suggested specific language to clarify that § 195.422 would apply only to pipelines not subject to IM requirements in § 195.452 and those determined not to have the potential to affect HCAs.

[43] Jeff Gottlieb: ''Phillips 66 oil line in Wilmington blamed for 1,200-gallon spill,'' Los Angeles Times, March 18, 2014. *http://articles.latimes.com/2014/mar/18/local/la-me-0319-crude-oil-20140319.*

API–AOPL also expressed concern that PHMSA might apply these criteria beyond non-HCA transmission lines to gravity and gathering lines located offshore and recommended explicit language to state that § 195.422 does not apply to gravity or gathering lines. The GPA requested that PHMSA clarify the applicability of this section to out-of-service, ''idle'' pipelines.

Commenters also asked for additional standards for conditions triggering repairs. For example, one public safety organization requested a more stringent standard for the amount of metal loss that triggers ''immediate repair,'' whereas the Alliance for Great Lakes et al. recommended that PHMSA establish standards for the prevention, detection, and remediation of significant stress corrosion cracking and stress corrosion cracking.

The IPAA commented that PHMSA did not address whether resources exist to make the additional repairs that would be required, nor did it demonstrate a nexus between existing risk and the more conservative repair requirements that justify the potential costs, especially when considering regulated gathering lines. The GPA requested documentation on the basis for requiring the same repair criteria for non-gathering lines as the repair criteria for pipelines affecting HCAs. Western Refining recommended that PHMSA exempt pipeline segments that normally operate at a low pressure from the pressure reduction requirement. API–AOPL recommended that PHMSA add an immediate repair condition for crack anomalies at a 70 percent nominal wall thickness and an 18-month repair condition on dents with corrosion. API–AOPL also recommended that PHMSA include a ''Scheduled Conditions'' repair condition for non-HCA lines, which would require an operator to make a report prior to the year when a calculation of the predicted remaining strength of the pipe (including allowances for growth and tool measurement error) shows a predicted burst pressure at less than 1.1 times the MOP at the location of the anomaly. This recommendation aimed to mitigate the potential for pressure-limiting, immediate features before the next ILI. Enterprise Products Partners recommended language to provide operators with flexibility to determine the severity of the reported metal loss indication and its potential impact on the integrity of the pipeline by setting the dent threshold as corroded areas deeper than 20 percent of the nominal wall thickness or where an engineering analysis indicates a reduction in the safe operating pressure of the dented area.

API–AOPL and AGA recommended eliminating the SCC and SSWC immediate repair criteria. The AGA also requested that PHMSA allow pipeline operators to prioritize the repair of HCA segments over non-HCA segments. The GPA was also concerned that PHMSA's definition of SCC was based on the use of the word ''significant,'' because the term is subjective and PHMSA's proposed descriptors do not include all the variables that influence SCC behavior and is therefore very incomplete for assigning an ''actionable'' status for all instances.

The PST requested that PHMSA change § 195.563(a) to require that constructed, relocated, replaced, or otherwise changed pipelines must have cathodic protection within 6 months instead of 1 year, and they also requested that PHMSA require operators to know what type of pipe is in the ground and set the MOP appropriately, or test the pipe with an appropriate hydrotest to demonstrate a safe MOP.

During the meeting of February 1, 2016, the LPAC recommended that PHMSA modify the NPRM to include recognized industry engineering analysis regarding dents and cracks to determine they are non-injurious and do not require immediate repair, and to give full and equal consideration to the stakeholder comments that were considered during the LPAC discussion.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters. PHMSA proposed revisions to the IM repair criteria to provide operators greater flexibility regarding the repair timeframes for certain anomalies, provide additional clarification regarding specific anomaly types, and address pipe cracking issues both the agency and the NTSB had identified following the incident near Marshall, MI, especially regarding stress corrosion cracking and selective seam weld corrosion. PHMSA also proposed to apply these changes with some modifications to non-HCAs to provide flexibility to operators and allow the risk-based prioritization of repairs.

PHMSA notes that the LPAC, with certain suggestions, found the changes to both the non-HCA repair criteria and the HCA repair criteria to be cost-effective, practicable, and technically feasible provisions, and these provisions seemed to have wide stakeholder support following the ANPRM stage. However, PHMSA determined as part of the review process that it needs to gather additional data, including with respect to cost-benefit information, and to assess new technologies and practices before promulgating the proposed changes for non-HCA pipelines in this final rule. Based on this, PHMSA has decided to separate the repair-criteria provisions from this final rule and intends to issue a supplemental notice of proposed rulemaking where PHMSA would further analyze developing technology and practices, anomaly types and repair timeframes, and engineering critical assessment methods. This path will also provide commenters an additional opportunity to provide input on an important part of the regulations. PHMSA will incorporate any relevant discussion it would have included in this section of this rulemaking when discussing repair criteria in the supplemental notice. Therefore, for the purposes of this final rule, PHMSA is retaining the existing non-IM repair language at § 195.401(b)(1) and the existing IM repair language at § 195.452(h).

For non-IM pipelines, §§ 195.401(b)(1), 195.585, and 195.587 outline the requirements for non-integrity management pipeline repairs. Section 195.401(b)(1) requires operators that discover any condition that could adversely affect the safe operation of its pipeline system, they must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition. For IM pipelines, PHMSA expects operators to continue to follow the existing regulations in §§ 195.401(b)(2) and 195.452(h) as they are written and repair the listed anomaly types within the specified timeframes.

*F. Leak Detection Requirements*

1. PHMSA's Proposal

With respect to new hazardous liquid pipelines, PHMSA proposed to amend § 195.134 to require that all new lines be designed to have leak detection systems, including pipelines located in non-HCA areas.

With respect to existing pipelines, 49 CFR part 195 contains mandatory leak detection requirements for only those hazardous liquid pipelines that could affect an HCA. Congress included additional requirements for leak detection systems in section 8 of the 2011 Pipeline Safety Act. That legislation requires the Secretary to submit a report to Congress, within 1 year of the enactment date, on the use of leak detection systems, including an analysis of the technical limitations and the practicability, safety benefits, and

adverse consequence of establishing additional standards for the use of those systems. Congress authorized the issuance of regulations for leak detection if warranted by the findings of the report.

Based on information available to PHMSA including post-accident reviews and the Kiefner Report, PHMSA believes the need to strengthen the requirements for leak detection systems is clear. In addition to modifying § 195.444 to require a means for detecting leaks on all portions of a hazardous liquid pipeline system including non-HCA areas, PHMSA proposed that operators perform an evaluation to determine what kinds of systems must be installed to adequately protect the public, property, and the environment. The proposed amendment to § 195.11 extended these new leak detection requirements to regulated onshore gathering lines.

2. Summary of Public Comment

Trade organizations expressed concerns with requiring operators of gathering lines and certain non-gathering lines to install and maintain leak detection systems. The GPA commented that PHMSA's proposal is not appropriate for gathering lines at this time, citing findings of the ''Liquids Gathering Pipelines: A Comprehensive Analysis'' study,[44] which concluded that (1) gathering lines present unique challenges to leak detection technologies; (2) gathering lines are constantly transition in flow, pressure, and line-packing; (3) benefits do not justify the cost for leak detection systems applied to gathering lines; and (4) there is a lack of demonstrated technology to reliably detect spills. The IPAA noted that PHMSA should not proceed with expanding leak detection systems because it had not performed an analysis of the practicability of establishing technically, operationally, and economically feasible standards for the capability of such systems to detect leaks, and the safety benefits and adverse consequences of requiring operators to use leak detection systems. The GPA also recommended that PHMSA provide relief for short sections of pipeline less than 1 mile in length and lines located within facilities where they pose no risk to the public. API–AOPL and OOC requested clarification that this section would not apply to offshore gathering lines. The commenters requested implementation periods ranging between 5 years (API–AOPL) and 7 years (GPA). Finally, the Texas Pipeline Association commented on the cost of complying with this regulation for lines outside of HCAs and the redirection of resources from high-risk areas to lower-risk areas that they allege would occur.

Citizen groups and other commenters requested minimum standards for leak detection systems, and applicability to all hazardous liquids lines. The Pipeline Safety Coalition recommended the inclusion of (1) all existing hazardous liquids lines and all lines under construction at rulemaking; (2) prescriptive standards for leak detection classifications; (3) prescriptive standards for acceptable leak detection procedures and devices; and (4) standards that are specific to location, community, and environmentally sensitive areas. The Alliance for Great Lakes et al. commented that computational pipeline monitoring systems detect only large ruptures and involve significant data interpretation and analysis. They expressed concerns regarding the lack of system standards and guidance on how to assess the effectiveness of a given leak detection system on a given pipeline due to significant variations in pipeline design. The Environmental Defense Center also recommended that automatic shutdown systems be required.

Beyond requirements for new pipelines, some commenters also requested a clear schedule for leak detection system for pipelines undergoing construction. For example, the NTSB urged PHMSA to include language that specifies a distinct trigger date for leak detection implementation on pipelines that have already started construction but would not yet be operational when the new regulation becomes effective.

During the February 1, 2016, meeting, the LPAC recommended that PHMSA modify the NPRM to (1) provide a 5-year implementation period for existing pipelines and a 1-year implementation period for new pipelines and (2) clarify that the expanded use of leak detection systems is not applicable to offshore gathering pipelines.

3. PHMSA Response

PHMSA notes that commenters asserting PHMSA lacks the authority to require leak detection systems because it did not first conduct a study of these systems are incorrect. PHMSA did perform a leak detection study (''Leak Detection Study—DTPH56–11–D000001''[45]), as required by section 8 of the 2011 Pipeline Safety Act, and submitted this study to Congress on December 31, 2012. The study examined what methods and measures operators were using as leak detection systems and the limitations of those methods and measures. The study noted that ''due to the vast mileage of pipelines throughout the Nation, it is important that dependable leak detection systems are used to promptly identify when a leak has occurred so that appropriate response actions are initiated quickly. The swiftness of these actions can help reduce the consequences of accidents or incidents to the public, environment, and property.'' The study also noted that ''incidents described as leaks can also have reported large release volumes.'' Based on the results of the study, and due to pipeline accidents such as those near Marshall, MI, and Salt Lake City, UT, which the study referenced, PHMSA concluded that operators need to have an adequate means for identifying leaks to better protect the public, property, and the environment. PHMSA continues to foster leak detection technology improvements through research and development projects, and PHMSA is also considering pursuing rupture detection metrics in another rulemaking.

Recognizing that leak detection technology can be unreliable does not imply that monitoring and leak detection are without value. The value of lost product, negative impacts to the environment, loss of pipeline functionality, spill remediation costs, and public perception all impact decisions regarding the implementation of leak detection systems. It is difficult to assign costs to many of these items. PHMSA expects that the implementation of leak detection systems on non-HCA pipelines will accelerate leak detection, lead to faster response and spill containment, and reduce damages from hazardous liquid releases.

Given this information, PHMSA is finalizing a rule that requires all new and existing lines, except for gathering lines not subject to IM, regulated rural gathering lines, and offshore lines, to implement leak detection systems. Since all lines within HCAs are already subject to this requirement, the final rule affects pipelines outside of HCAs.

[44] Energy and Environmental Research Center, University of North Dakota, 2015, *https://www.undeerc.org/bakken/pdfs/EERC%20Gathering%20Pipeline%20Study%20Final%20Dec15.pdf.*

[45] Kiefner & Associates, Inc.: ''Leak Detection Study,'' Final Report No. 12–173, DTPH56–11–D–000001, December 10, 2012. *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Press%20Release%20Files/Leak%20Detection%20Study.pdf.*

Commenters and LPAC members made persuasive arguments regarding the technical challenges that exist for implementing leak detection systems on offshore gathering lines due to the complex network of gathering lines coming from offshore platforms and tremendous fluctuations in flow controlled directly by production platforms. Further, commenters had concerns that there was not adequate justification for leak detection requirements on regulated rural gathering lines due to the lack of incident history. PHMSA did not receive any data or comments that contradicted these assertions; therefore, PHMSA is not extending leak detection requirements to offshore gathering lines or regulated rural gathering lines at this time. However, PHMSA does note that the LPAC had no objections to extending this requirement to regulated rural gathering lines and found the provision to be a cost-effective, practicable, and technically feasible provision. Further, during the 12866 meeting between OIRA and API on December 12, 2016, API presented data stating that operators agree with PHMSA's assumptions regarding the use of leak detection systems on non-HCA pipelines. As such, PHMSA may consider extending leak detection requirements to these lines in the future.

PHMSA considered input from the comments and from the LPAC in setting compliance periods of 1 year for all new lines, and 5 years for all existing lines. Regarding concerns about compliance periods for pipelines under construction, PHMSA considers any line that becomes operational after the publication of this rule to be a new line and will have 1 year to comply. PHMSA will consider pipelines that are already operational before the publication of this rule as existing lines, and those will have 5 years to comply. PHMSA determined that the specified timelines are reasonable and practicable given that many operators already implement leak detection systems on their entire network across both HCA and non-HCA miles, and because many operators are constructing and designing new lines with leak detection system capabilities. Further, PHMSA assumes that the cost of extending existing capabilities to non-HCA miles is minimal for systems already equipped with SCADA sensors (see the RIA for details).

Certain commenters questioned the methods of leak detection that PHMSA would require to comply with this provision. PHMSA notes that negative pressure wave monitoring, real-time transient modelling, or other external systems are not necessarily required to comply with the rule. The costs of using or installing these leak detection system components were not explicitly analyzed in the RIA; however, operators may voluntarily choose to use these components, as well as any others, to comply with the leak detection requirements of the rule.

PHMSA received several comments regarding leak detection system performance criteria, valve spacing requirements, and automatic shutdown capability, which were topics listed in the ANPRM. Due to the complexity of these topics and the need for further study and public comment, PHMSA is pursuing these topics in a separate rulemaking.[46]

*G. Increased Use of ILI Tools in HCAs*

1. PHMSA's Proposal

PHMSA proposed to require that all hazardous liquid pipelines in HCAs and areas that could affect an HCA be made capable of accommodating ILI tools within 20 years, unless the basic construction of a pipeline will not accommodate the passage of such a device. The current requirements for the passage of ILI devices in hazardous liquid pipelines are prescribed in § 195.120, which require that new and replaced pipelines be designed to accommodate in-line inspection tools. Section 60102(f)(1)(B) of the Pipeline Safety Laws allows the requirements for the passage of ILI tools to be extended to existing hazardous liquid pipeline facilities, provided the basic construction of those facilities can be modified to permit the use of smart pigs.

2. Summary of Public Comment

Trade organizations expressed concern that the NPRM would inhibit operators from exercising their expert judgement in selecting an assessment method and would be overly burdensome. API–AOPL and other industry representatives requested that PHMSA not adopt this proposal because it would require pipelines to incur extensive costs due to age, design, and location of the pipelines, without demonstrating commensurate benefits. They also requested that PHMSA remove the requirement to petition for an exemption under § 190.9 and instead continue to allow operators to exercise their expertise and engineering judgment in using the most effective and efficient methods of evaluating the integrity of their facilities with prior notification to OPS.

The IPAA and the American Gas Association (AGA) requested that PHMSA review current studies or conduct an original study to determine if ILI is appropriate to monitor pipeline corrosion given the current state of technology. The AGA also requested that PHMSA provide additional information on what the term ''basic construction'' meant in the exemption from the ILI-capable requirement.

Conversely, citizen groups and individuals recommended that operators use ILI more broadly. An organization representing public safety and other commenters expressed concern with the length of the 20-year implementation period and the multiple exemptions such as where the pipe is constructed in such a way that an ILI device cannot be accommodated. Some of these commenters recommended instead that: (1) PHMSA significantly reduce the timing of accommodating ILI devices, perhaps to 5 years; (2) PHMSA require all new pipelines constructed in HCAs to accommodate ILI devices immediately; (3) PHMSA reexamine and tighten proposed exemptions; and (4) PHMSA establish standards for ILI tools, including the detection of stress corrosion cracking. Congresswoman Capps suggested that PHMSA could establish a shorter time frame of 5 years with an extension possible upon request with sufficient evidence for need and a provided plan of action to meet the standard. The PST recommended that operators integrate close interval survey results into ILI device findings.

Other groups commented on the tools used for inspection, the compliance periods, and accountability. The Environmental Defense Center requested that PHMSA require other inspection tools and methods, such as hydrostatic pressure testing, where operators detect certain types of anomalies and when these technologies can provide additional information regarding the condition and vulnerabilities of a pipeline system. The Alliance for Great Lakes et al. recommended that PHMSA develop a framework that assigns different compliance periods for pipelines based on factors such as age, leak history, corrosion, environmental circumstances that could affect the pipeline, and other aspects such as those typically reviewed in IM studies. Finally, California Assembly Member Das Williams requested that operators be required to submit ILI data to PHMSA for review and verification.

The NTSB recommended that PHMSA require owners/operators to develop comprehensive implementation plans with transparent progress reporting of

[46] ''Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards,'' RIN: 2137–AF06.

intermediate milestones to best ensure operators modify existing pipelines to accommodate the passage of ILI devices within the 20-year time limit. The NTSB also recommended that operators modify all newly identified HCA segments to accommodate an internal inspection tool according to an accelerated schedule, but not more than 5 years after an operator identifies the HCA.

During the February 1, 2016, meeting, the LPAC recommended that PHMSA adopt the proposed 20-year implementation period as feasible and cost-effective. In a separate vote, the LPAC reached a tie on a 10-year implementation period, which resulted in a failed motion. The LPAC also recommended that § 195.452(n) be modified to allow an operator to file a petition that ILI tools cannot be accommodated when the operator determines it would abandon or shut down a pipeline as a result of the cost to comply.

3. PHMSA Response

PHMSA carefully considered input from commenters and the LPAC in finalizing this rule, which requires that all HCA pipelines whose basic construction would accommodate ILI tools be modified to permit the use of ILI tools within 20 years. Examples of ''basic construction'' that an operator may be able to show would not accommodate ILI tools include short length, small diameter, diameter changes, low operating pressure, low-volume flow, location, sharp bends, and terrain. PHMSA shares the interest of commenters who requested expeditious upgrades to the pipeline network to accommodate ILI tools. PHMSA maintains that ILI tools are generally more effective than other methods at detecting integrity issues. ILI tools take advantage of state-of-the-art technological developments and allow operators to identify anomalies and prioritize anomalies without interrupting services. ILI tools also provide a higher level of detail than is possible using other testing tools such as hydrotesting, which allow operators to determine whether a required safety margin is met (*i.e.,* pass/fail) but do not provide information about the existence of anomalies that could deteriorate over time between tests. PHMSA notes that the existing regulation already requires new pipelines to be capable of accommodating ILI tools, as certain commenters requested. Data from operators' pipeline annual reports suggest that the vast majority of pipeline miles are currently assessed using ILI tools. The mileage not assessed using these tools is likely to consist of pipeline segments, such as small diameter pipes, where ILI is impracticable using the current technologies. Providing sufficient time for ILI tool accommodation projects allows the industry to prioritize these projects based on age or other factors, including the risk factors identified by the Alliance for the Great Lakes in their comments; it also reduces the mileage of pipeline potentially needing to be replaced before they have reached their operational life. PHMSA determined that a 20-year timeline strikes the appropriate balance between the need to make upgrades as soon as possible to enable more effective integrity assessment technologies, with the costs and operational practicalities of making those changes. Given that a preponderance of HCA pipelines can already accommodate ILI tools, exceptions available for specific pipeline designs, operational benefits of ILI over other assessment methods, the continued aging of unpiggable lines, and the 20-year compliance deadline that will further reduce remaining mileage of old pre-ILI pipeline, PHMSA determined that the final rule requirement to make existing HCA pipelines able to accommodate ILI tools is unlikely to impact any amount of the hazardous liquid pipeline infrastructure.[47] Accordingly, PHMSA does not estimate any cost for this requirement.

PHMSA will consider modifying its annual report form to have hazardous liquid pipeline operators report data on what percentages of their lines are piggable. In response to commenters who sought more immediate implementation, PHMSA notes that inability to use ILI on a pipeline segment does not mean that an operator has not assessed the pipeline; the regulation requires that these pipelines be assessed using alternative approaches, with hydrotesting being the most common alternative. Data reviewed by PHMSA indicates that less than 1 percent of HCA pipeline mileage is assessed using direct assessment methods. Comments about seismicity considerations are addressed in the next section.

In response to commenters who requested a specific deadline for making lines in newly identified HCAs capable of accommodating ILI tools, PHMSA notes that operators will have until the end of the 20-year implementation period to make lines piggable. Operators who newly identify HCAs in years 16–20 of the implementation period and after the 20-year implementation period will have 5 years from the date of the HCA identification to make lines in those areas piggable.

*H. Clarifying Other Requirements*

1. PHMSA's Proposal

PHMSA also proposed several other clarifying changes to the regulations that were intended to improve compliance. First, PHMSA proposed to revise paragraph (b)(1) of § 195.452 to better harmonize the current regulations. The existing § 195.452(b)(2) requires that segments of new pipelines that could affect HCAs be identified before the pipeline begins operations and § 195.452(d)(1) requires that baseline assessments for covered segments of new pipelines be completed by the date the pipeline begins operation. However, § 195.452(b)(1) does not require an operator to draft its IM program for a new pipeline until 1 year after the pipeline begins operation. Improved consistency would be beneficial, as the identification of could affect segments and the performance of baseline assessments are elements of the written IM program. PHMSA proposed to amend the table in (b)(1) to resolve this inconsistency by eliminating the 1-year compliance deadline for Category 3 pipelines. An operator of a new pipeline would be required to develop its written IM program before the pipeline begins operation.

PHMSA proposed to add additional specificity to § 195.452(g) by establishing several pipeline attributes that must be included in IM information analyses and to explicitly require that operators integrate analyzed information to help ensure they are properly evaluating interacting threats. PHMSA also proposed that operators explicitly consider any spatial relationships among anomalous information.

PHMSA also proposed that operators verify their segment identification annually by determining whether factors considered in their analysis have changed. The change that PHMSA proposed would not require that operators automatically re-perform their segment analyses. Rather, it would require operators to identify the factors considered in their original analyses, determine whether those factors have changed, and consider whether any such change would be likely to affect the results of the original segment

[47] In the RIA, PHMSA estimates that over 98 percent of pipelines for which ILI is applicable likely are already able to accommodate ILI tools. Given the factors listed here, PHMSA assumes that essentially all HCA lines for which ILII is practicable are currently, or will be within the next 20 years, piggable. Further details are in the RIA for this rulemaking.

identification. If so, the operator would be required to perform a new segment analysis to validate or change the endpoints of the segments affected by the change.

PHMSA also proposed to add an explicit reference clarifying that the IM requirements apply to portions of pipeline facilities other than line pipe. Unlike integrity assessments for line pipe, § 195.452 does not include explicit deadlines for completing the analyses of other facilities within the definition of ''pipeline'' or for implementing actions in response to those analyses. While most operators correctly treat any component that product moves through in areas that could affect HCAs as subject to IM, PHMSA has reason to believe that some operators have not completed analyses of their non-pipe facilities such as pump stations and breakout tanks and have not implemented appropriate protective and mitigative measures.

Section 29 of the 2011 Pipeline Safety Act states that ''[i]n identifying and evaluating all potential threats to each pipeline segment pursuant to parts 192 and 195 of title 49, Code of Federal Regulations, an operator of a pipeline facility shall consider the seismicity of the area.'' While seismicity is already mentioned at several points in the IM program guidance provided in Appendix C of part 195, PHMSA proposed to further comply with Congress's directive by including an explicit reference to seismicity in the list of risk factors that must be considered in establishing assessment schedules (§ 195.452(e)), performing information analyses (§ 195.452(g)), and implementing preventive and mitigative measures (§ 195.452(i)) under the IM requirements.

2. Summary of Public Comment

Trade organizations commented primarily on the implementation period for PHMSA's clarifications on data integration and the attributes and information required. Other trade associations joined API–AOPL in requesting a 5-year implementation schedule for integrating these specific attributes, including populating data into information systems and validating the quality of the data process. The AGA recommended that PHMSA focus on the analysis of information and attributes rather than their integration.

Trade organizations also requested flexibility in developing the attributes and information required in data analysis. The AGA requested that operators independently develop the list of information and attributes to be included in data analysis. They also commented that there is no current regulatory requirement for an operator of hazardous liquid or natural gas pipelines to maintain or utilize a GIS.

Finally, trade organizations expressed concern with changes to the baseline assessment of newly constructed pipelines. API–AOPL requested that PHMSA clarify that hydrostatic testing is an acceptable method of meeting this requirement for new construction.

During the February 1, 2016, meeting, the LPAC recommended that PHMSA modify the NPRM to require data integration to begin in year one, with all attributes completed within 3 years.

3. PHMSA Response

PHMSA appreciates the information provided by the commenters. As discussed at the LPAC meeting, integrating data is a key element and concept of continuous improvement and IM. The requirement that operators perform data integration has long been a part of IM program requirements. The attributes that PHMSA proposed in the NPRM were factors operators should have already been considering when assessing risk to their pipelines—PHMSA is merely codifying them to better ensure all operators are utilizing them. PHMSA understands that the need for some operators to enhance their data systems to fit these specific attributes will take some time and effort. Because of this, PHMSA agrees with the LPAC that operators should be given a maximum of 3 years to fully comply and integrate all the proposed attributes into their data integration systems, with implementation beginning once the rule is published. However, this implementation period does not mean operators should lapse in what they are currently required to perform under § 195.452(g). PHMSA expects operators to add the attributes issued in this final rule to their current data integration systems and efforts. While PHMSA is sympathetic to allowing operators more flexibility with the attributes that should be considered for data integration, experience has shown that PHMSA needs to prescribe a common baseline set of attributes for operators to assess.

PHMSA agrees with commenters who believe hydrostatic testing is an acceptable baseline assessment method for newly constructed pipelines and is incorporating that option into this final rule. As operators are required to conduct hydrostatic tests on all newly constructed pipelines prior to operation, and PHMSA allows operators to use hydrostatic testing for subsequent assessments, PHMSA has determined this could eliminate additional duplicative baseline assessments and reduce operator burden.

## V. PIPES Act of 2016

On June 22, 2016, the President signed the PIPES Act of 2016, Public Law 114–183, containing Sections 14 and 25, ''Safety Data Sheets'' and ''Requirements for Certain Hazardous Liquid Pipeline Facilities,'' respectively. The language in both Section 14 and Section 25 is self-executing, with Section 25 specifically amending the Pipeline Safety Act at 49 U.S.C. 60109 by adding new paragraphs (g) through (g)(4). To allow the timely implementation of these sections of the PIPES Act of 2016 and to help ensure regulatory certainty, PHMSA has determined that good cause exists for finding that notice and comment on these provisions is impracticable and contrary to the public interest and is subsequently incorporating them into this final rule.

Section 14 of the PIPES Act of 2016 requires owners and operators of hazardous liquid pipeline facilities, following accidents involving pipeline facilities that result in hazardous liquid spills and within 6 hours of a telephonic or electronic notice of the accident to the National Response Center, to provide safety data sheets on any spilled hazardous liquid to the designated Federal On-Scene Coordinator and appropriate State and local emergency responders. PHMSA has incorporated this requirement in a new § 195.65 under the reporting requirements of Subpart B.

Section 25 of the PIPES Act of 2016 applies to operators of any underwater hazardous liquid pipeline facility located in an HCA that is not an offshore pipeline facility and any portion of which is located at depths greater than 150 feet under the surface of the water. Operators of these facilities, notwithstanding any pipeline integrity management program or integrity assessment schedule otherwise required by the Secretary, must ensure that pipeline integrity assessments using internal inspection technology appropriate for the pipeline's integrity threats are completed not less often than once every 12 months; and using pipeline route surveys, depth of cover surveys, pressure tests, ECDA, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility, ensure that pipeline integrity assessments are completed on a schedule based on the risk that the pipeline facility poses to the HCA in which the pipeline facility is located. PHMSA has incorporated these

requirements in a new § 195.454 as an addition to the pipeline integrity management requirements under subpart F.

## VI. Section-by-Section Analysis

*§ 195.1 Which pipelines are covered by this part?*

Section 195.1(a) lists the pipelines that are subject to the requirements in 49 CFR part 195, including gathering lines that cross waterways used for commercial navigation as well as certain onshore gathering lines (*i.e.,* those that are in a non-rural area, that meet the definition of a regulated onshore gathering line, or that are in an inlet of the Gulf of Mexico). PHMSA has determined it needs additional information about unregulated gathering lines to fulfill its statutory obligations, and it has determined it needs additional information about gravity lines to determine whether any safety regulations need to be extended to these lines as well. Accordingly, this final rule extends the reporting requirements in subpart B of part 195 to all gravity and gathering lines (whether regulated, unregulated, onshore, or offshore).

*§ 195.2 Definitions*

Section 195.2 provides definitions for various terms used throughout part 195. On August 10, 2007, PHMSA published a policy statement and request for comment on the transportation of ethanol, ethanol blends, and other biofuels by pipeline (72 FR 45002). PHMSA noted in the policy statement that the demand for biofuels was projected to increase in the future because of several Federal energy policy initiatives, and that the predominant modes for transporting such commodities (*i.e.,* truck, rail, or barge) would expand over time to include greater use of pipelines. PHMSA also stated that ethanol and other biofuels are substances that ''may pose an unreasonable risk to life or property'' within the meaning of 49 U.S.C. 60101(a)(4)(B) and accordingly these materials constitute ''hazardous liquids'' for purposes of the pipeline safety laws and regulations.

PHMSA is modifying the definition of ''hazardous liquid'' in § 195.2 to conform with 49 U.S.C. 60101(a)(4)(B) and clarify that the transportation of biofuel by pipeline is subject to the requirements of 49 CFR part 195.

*Section 195.3 What documents are incorporated by reference partly or wholly in this part?*

The incorporation by reference of NACE SP0102 and API RP 1130 was previously approved by the Director of the Federal Register and is not changed by this rule.

*Section 195.13 What requirements apply to pipelines transporting hazardous liquids by gravity?*

Section 195.13 is added to subject gravity lines to the same annual, accident, and safety-related condition reporting requirements in subpart B of part 195 as other hazardous liquid pipelines.

*Section 195.15 What reporting requirements apply to reporting-regulated-only gathering lines?*

Section 195.15 is added to subject otherwise unregulated rural gathering lines and certain offshore lines in State waters to the annual, accident and safety-related condition reporting requirements in subpart B of part 195 as other hazardous liquid pipelines.

*Section 195.65 Safety Data Sheets*

Section 195.65 contains the requirements for providing safety data sheets on spilled hazardous liquids following accidents. In accordance with Section 14 of the PIPES Act of 2016, PHMSA is requiring owners and operators of hazardous liquid pipeline facilities, following accidents that result in hazardous liquid spills, to provide safety data sheets on those spilled hazardous liquids to the designated Federal On-Scene Coordinator and appropriate State and local emergency responders within 6 hours of a telephonic or electronic notice of the accident to the National Response Center. This is a self-executing provision from the PIPES Act of 2016 that PHMSA is incorporating into subpart B of the hazardous liquid pipeline safety regulations.

*Section 195.120 Passage of Internal Inspection Devices*

Section 195.120 contains the requirements for accommodating the passage of internal inspection devices in the design and construction of new or replaced pipelines. PHMSA has decided that, in the absence of an emergency, or where the basic construction makes that accommodation impracticable, a pipeline should be designed and constructed to permit the use of ILIs. Accordingly, this final rule repeals the provisions in the regulation that allow operators to petition the Administrator for a finding that the ILI compatibility requirement should not apply as a result of construction-related time constraints and problems. The other provisions in § 195.120 are re-organized without altering the existing substantive requirements.

*Section 195.134 Leak Detection*

Section 195.134 contains the design requirements for computational pipeline monitoring leak detection systems. The final rule restructures the existing requirements into paragraphs (a) and (c) and adds a new provision in paragraphs (b) and (d) to ensure that all newly constructed, covered pipelines are designed to include leak detection systems based upon standards in section 4.2 of API 1130 or other applicable design criteria in the standard.

*Section 195.401 General Requirements*

Section 195.401 prescribes general requirements for the operation and maintenance of hazardous liquid pipelines. PHMSA is modifying the pipeline repair requirements in § 195.401(b). PHMSA is retaining, without change, the requirements in paragraphs (b)(1) for non-IM repairs and (b)(2) for IM repairs. A new paragraph (b)(3) is added, however, to clearly require operators to consider the risk to people, property, and the environment in prioritizing the remediation of any condition that could adversely affect the safe operation of a pipeline system, no matter whether those conditions are in HCAs or non-HCAs.

*Section 195.414 Inspections of Pipelines in Areas Affected by Extreme Weather and Natural Disasters*

Extreme weather and natural disasters can affect the safe operation of a pipeline. Accordingly, this final rule establishes a new § 195.414 that requires operators to perform inspections after these events and to take appropriate remedial actions.

*Section 195.416 Pipeline Assessments*

Periodic assessments, particularly with ILI tools, provide critical information about the condition of a pipeline, but are only currently required under IM requirements in §§ 195.450 through 195.452. PHMSA has determined that operators should be required to have the information needed to promptly detect and remediate conditions that could affect the safe operation of pipelines in all areas. Accordingly, the final rule establishes a new § 195.416 that requires operators to perform an assessment, at least once every 10 years, of onshore pipelines that can accommodate inline inspection tools and that are not already subject to the IM requirements. This assessment must be performed for the range of relevant threats to the pipeline segment using an appropriate ILI tool(s) and

account for uncertainties in reported results. Operators must use a method capable of assessing seam integrity and corrosion and deformation anomalies when assessing LF–ERW pipe, lap-welded pipe, or pipe with a seam factor of less than 1.0. In lieu of performing an ILI assessment on their lines, operators can perform the assessment by using a pressure test, external corrosion direct assessment, or other technology (subject to prior notification, method being able to assess the threat, and ''no objection'' by PHMSA) that can be demonstrated as providing an equivalent understanding of the pipe's condition.

The regulation also requires that the results of these assessments be reviewed by a person qualified to determine if any conditions exist that could affect the safe operation of a pipeline; that such determinations be made promptly, but no later than 180 days after the assessment; that any unsafe conditions be remediated in accordance with the repair requirements in § 195.401(b)(1); and that all relevant information about the pipeline be considering in complying with the requirements of § 195.416. Consistent with the requirements in the revised § 195.452(h)(2) regarding the discovery of condition, in cases where the information necessary to make determination about pipeline threats cannot be obtained within 180 days following the date of inspection, pipeline operators must notify PHMSA and provide an expected date when adequate information will become available.

*Section 195.444 Leak Detection*

Section 195.444 contains the operation and maintenance requirements for Computational Pipeline Monitoring leak detection systems. PHMSA is amending the PSR so that all covered hazardous liquid pipelines have a leak detection system. Therefore, the final rule reorganizes the existing requirements of the regulation into paragraphs (a) and (c), and adds a new general provision in paragraph (b) that requires operators to have leak detection systems on all covered pipelines and to consider certain factors in determining what kind of system is necessary to protect the public, property, and the environment.

*Section 195.452 Pipeline Integrity Management in High Consequence Areas*

Section 195.452 contains the IM requirements for hazardous liquid pipelines that could affect a HCA in the event of a leak or failure. The final rule clarifies the applicability of the deadlines in paragraph (b) for the development of a written program for new pipelines and low-stress pipelines in rural areas. The rule also makes the following amendments to paragraphs (c) through (o):

- Paragraph (c)(1)(i)(A) is amended to ensure that operators consider uncertainty in tool tolerance in reviewing the results of ILI assessments. The paragraph is also amended to be more consistent with paragraphs at § 195.416 by stating that pipeline segments with identified or probable risks or threats related to cracks (such as at pipe body and weld seams) based on the risk factors specified in paragraph (e), an operator must use an ILI tool or tools capable of detecting crack anomalies.
- Paragraph (d) is amended to eliminate obsolete deadlines for performing baseline assessments and to clarify the requirements for newly identified HCAs. The deletion of these previous compliance dates does not change or delete any associated recordkeeping requirements or implement any new recordkeeping requirements. Operators should retain the records they have used to show compliance regarding the baseline assessment deadlines.
- Paragraph (e)(1)(vii) is amended to include local environmental factors, including seismicity, that might affect pipeline integrity.
- Paragraph (g) is amended to prescribe certain data points and criteria that operators must consider in performing the information analysis required to evaluate periodically the integrity of covered pipeline segments.
- Paragraph (h)(2) is amended to require that in those situations where an operator must obtain adequate information within 180 days after an integrity assessment to determine whether an anomalous condition could present a potential integrity threat of the pipeline but the operator believes it is impracticable to obtain sufficient information within that period, the operator must notify PHMSA and provide an expected date when adequate information will become available.
- Paragraph (j) is amended to establish a new provision for verifying the risk factors used in identifying covered segments on at least an annual basis, not to exceed 15 months.
- A new paragraph (n) is added to require that all pipelines in areas that could affect an HCA be made capable of accommodating ILI tools within 20 years, unless, subject to a petition and PHMSA approval, the basic construction of a pipeline will not permit that accommodation, the existence of an emergency renders such an accommodation impracticable, or the operator determines it would abandon or shut down a pipeline as a result of the cost to comply with the requirement of this section. Paragraph (n) requires that pipelines in newly identified HCAs after the 20-year period be made capable of accommodating ILIs within 5 years of the date of identification or before the performance of the baseline assessment, whichever is sooner.
- Paragraph (o) is added to allow operators additional time to integrate the additional information and attributes that PHMSA has added to the information analysis required under paragraph (g)(1).
- Finally, an explicit reference to seismicity is added to factors that must be considered in establishing assessment schedules under paragraph (e), for performing information analyses under paragraph (g), and for implementing preventive and mitigative measures under paragraph (i).

*Section 195.454 Integrity Assessments for Certain Underwater Hazardous Liquid Pipeline Facilities Located in HCAs*

Section 195.454 contains additional assessment requirements for operators of any underwater hazardous liquid pipeline facility located in an HCA that is not an offshore pipeline facility and any portion of which is located at depths greater than 150 feet under the surface of the water. In accordance with section 25 of the PIPES Act of 2016, PHMSA is requiring these operators to ensure that they complete pipeline integrity assessments not less often than once every 12 months using internal inspection technology appropriate for the integrity threats to the pipeline and complete pipeline integrity assessments using pipeline route surveys, depth of cover surveys, pressure tests, external corrosion direct assessment, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility, on a schedule based on the risk that the pipeline facility poses to the HCA in which the pipeline facility is located. This is a self-executing provision from the PIPES Act of 2016 that PHMSA is incorporating into subpart F of the hazardous liquid pipeline safety regulations.

## VII. Regulatory Notices

*A. Statutory/Legal Authority for This Rulemaking*

This final rule is published under the authority of the Federal Pipeline Safety

Law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities, as delegated to the PHMSA Administrator under 49 CFR 1.97.

PHMSA is revising the ''Authority'' entry for part 195 to include a citation to a provision of the Mineral Leasing Act (MLA), specifically, 30 U.S.C. 185(w)(3). Section 185(w)(3) provides that ''[p]eriodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.'' The Secretary has delegated this responsibility to PHMSA (49 CFR 1.97). PHMSA has traditionally complied with § 185(w)(3) through the issuance of its pipeline safety regulations, which require annual examinations and prompt reporting for all or most of the pipelines they cover. PHMSA is making this change to be consistent with and make clear its long-standing position that the agency complies with the MLA through the issuance of pipeline safety regulations.

*B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735), and therefore was reviewed by the Office of Management and Budget. This final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of substantial congressional, State, industry, and public interest in pipeline safety.

In the regulatory analysis, PHMSA discusses the alternatives to the amended requirements and, where possible, provides estimates of the benefits and costs for specific regulatory requirements by individual requirement areas. The regulatory analysis provides PHMSA's best estimate of the impact of the final rule requirements. As shown in the table below, PHMSA estimated the total annual costs of the rule at $19.5 million using a 3 percent discount rate and $21.4 million using a 7 percent discount rate.

Due to data limitations, PHMSA evaluated the benefits of the final rule qualitatively. Overall, the rule will provide direct benefits through avoiding damages from hazardous pipeline incidents that may be prevented through earlier detection of threats to pipeline integrity from corrosion or following extreme weather events, and through enhancing the ability of PHMSA and pipeline operators to evaluate risks. As context, operator-reported data for hazardous liquid incidents that occurred between 2010 and 2017 show reported average annual damages of $91.6 million for pipelines outside HCAs and $265.8 million for pipelines inside HCAs, or about $815 and $3,222 per mile of hazardous liquid pipeline, respectively. These damages are only a fraction of the total social costs of hazardous liquid releases but indicate the potential magnitude of benefits derived from preventing pipeline failures.

ANNUALIZED COSTS AND BENEFITS BY REQUIREMENT AREA (2017$) [48]

| Final rule requirement area | Annual costs [1] | | Benefits |
|---|---|---|---|
| | 3% Discount rate | 7% Discount rate | |
| 1. Reporting requirements for gravity lines | $5,000 | $5,000 | Better risk understanding and management.[2] |
| 2. Reporting requirements for gathering lines | $75,000 | $76,000 | Better risk understanding and management.[3] |
| 3. Inspections of pipelines in areas affected by extreme weather events [4]. | Minimal | Minimal | Additional clarity and certainty for pipeline operators. |
| 4. Assessments of onshore pipelines that are not already covered under the IM program using ILI every 10 years [5 6]. | $6,467,000 | $6,467,000 | Avoided incidents and damages through detection of safety conditions.[7] |
| 5. IM repair criteria [8] | $0 | $0 | $0. |
| 6. LDSs on pipelines located outside HCAs [6] | $8,652,000 | $10,508,000 | Reduced damages through earlier detection and response.[9] |
| 7. Increased use of ILI tools [10] | Minimal | Minimal | Improved detection of pipeline flaws.[10] |
| 8. Clarify certain IM plan requirements. | $4,269,000 | $4,343,000 | Reduced damages through prevention and earlier detection and response.[11] |
| Total | $19,468,000 | $21,399,000 | Reduced damages from avoiding and/or mitigating hazardous liquid releases. |

[1] Costs in this table are rounded to the nearest thousand dollars and may differ from costs presented in individual sections of the document. One-time costs are annualized over a 10-year period using discount rates of 3 percent and 7 percent.

[2] Gravity lines can present safety and environmental risks. Depending on the elevation change, a gravity flow pipeline could have more pressure than a pipeline with pump stations to boost the pressure. The benefits of this requirement are not quantified, but based on social costs of $51 per gallon for releases from regulated gathering lines (see Section 2.6.2), the information would need to lead to measures preventing the release of 101 gallons per year to generate benefits that equal the costs.

[3] The benefits are not quantified, but based on social costs of $51 per gallon for releases from regulated gathering lines (see Section 2.6.2), the information would need to lead to measures preventing the release of 1,493 gallons per year to generate benefits that equal the costs.

[4] To the extent that the 72-hour timeline required in the final rule results in higher costs for conducting inspections following a disaster (e.g., due to staff overtime), the final rule could result in costs not reflected in this analysis.

[5] PHMSA also conducted a sensitivity analysis that uses alternative baseline assumptions for pipelines not currently covered under the IM program. Specifically, PHMSA estimated the costs for two alternative scenarios: (1) A scenario that assumes that 100 percent of mileage outside HCAs is assessed in the baseline; and (2) a scenario that assumes that 83 percent of the mileage is assessed in the baseline. Costs for these two scenarios are $0 and $12.9 million, respectively.

[6] Excludes gathering lines.

[7] Given a cost per incident of $536,800, incremental assessment of pipelines outside of HCAs would need to prevent 12 incidents for benefits to equate costs.

[8] PHMSA is not finalizing any changes to the repair criteria and as such expects no incremental costs or benefits.

[48] Numbers in this table may not sum due to rounding.

[9] As discussed in Section 2.6.2, 1,918 incidents involved pipelines outside HCAs between 2010 and 2017, or an average of 240 incidents per year. Transmission pipeline incidents outside HCAs had average costs of approximately $382,179, not including additional damages and costs that are excluded or underreported in the incident data. The annual cost estimate is equivalent to the average damages of 28 to 32 such incidents.

[10] Costs (to retrofit pipes to accommodate ILI) and benefits (from avoided damages) would accrue only to the extent that existing practices deviate from industry standards; PHMSA expects costs and benefits will be minimal due to baseline prevalence of ILI-capable pipelines in all areas.

[11] The benefits of reduced costs associated with the prevention or reduction of released hazardous liquids cannot be quantified but could vary in frequency and size depending on the types of failures that are averted. Including additional pipelines in the IM plan, integrating data, and conducting spatial analyses is expected to enhance an operator's ability to identify and address risk. The societal costs associated with incidents involving pipelines in HCAs average $1.7 million per incident (see Section 2.6.2). The annual cost estimates for this requirement are equivalent to the average damages from less than three such incidents. This is relative to an annual average of 161 incidents in HCAs between 2010 and 2017.

Overall, factors such as increased safety, public confidence that all pipelines are regulated, quicker discovery of leaks and mitigation of environmental damages, and better risk management are expected to yield benefits that exceed or otherwise justify the costs. A copy of the final RIA has been placed in the docket. 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).

*C. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

The final rule is an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

*D. Executive Order 13132: Federalism*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. It does not adopt any regulation that imposes substantial direct compliance costs on state and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.''

The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

PHMSA performed a screening analysis of the economic impact on small entities. The screening analysis is available in the docket for the rulemaking. PHMSA estimates that compliance costs may exceed 1 percent of sales for 23 to 31 of the estimated small businesses and may exceed 3 percent of sales for 9 to 10 small businesses. The higher number of affected small businesses assumes that the operator incurs costs for all applicable requirements.

Given the small number and percentage of small businesses affected, the small sales test ratios, and the noted flexibility, PHMSA determined that the final rule will not have a significant impact on a substantial number of small entities.[49]

Therefore, I certify that this action does not have a significant economic impact on a substantial number of small entities.

*F. National Environmental Policy Act*

PHMSA analyzed this final rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), and DOT Order 5610.1C, and has determined that this action will not significantly affect the quality of the human environment. An environmental assessment of this rulemaking is available in the docket.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have Tribal implications and does not impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

*H. Paperwork Reduction Act*

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. PHMSA estimates the proposals in this rulemaking will impact the following information collections:

''Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting'' identified under Office of Management and Budget (OMB) Control Number 2137–0047;

''Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities'' identified under OMB Control Number 2137–0578;

''Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines'' identified under OMB Control Number 2137–0605;

''Pipeline Safety: Reporting Requirements for Hazardous Liquid Pipeline Operators: Hazardous Liquid Annual Report'' identified under OMB Control Number 2137–0614;

''National Registry of Pipeline and LNG Operators'' identified under OMB Control Number 2137–0627; and

''Operator Notifications—Alternate Pressure Testing Method'' identified under OMB Control Number 2137–0630.

PHMSA will submit an information collection revision request to OMB for

[49] Based on SBA (2013), including criteria developed by other agencies.

approval based on the requirements in this rule. These information collections are contained in the Federal Pipeline Safety Regulations, 49 CFR parts 190–199. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. The information collection burden for the following information collections are estimated to be revised as follows:

1. *Title:* Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.

*OMB Control Number:* 2137–0047.

*Current Expiration Date:* 08/31/2020.

*Abstract:* This information collection covers the collection of information from owners and operators of hazardous liquid pipelines. To ensure adequate public protection from exposure to potential hazardous liquid pipeline failures, PHMSA collects information on reportable hazardous liquid pipeline accidents. 49 CFR 195.54 requires hazardous liquid operators to file an accident report, as soon as practicable, but not later than 30 days after discovery of the accident, on DOT Form 7000–1 whenever there is a reportable accident the characteristics of an operator's pipeline system. The final rule will require operators of both gravity lines and gathering lines to be subject to these accident reporting requirements. Thus, PHMSA expects an additional 28 HL pipeline operators (23 gathering line operators and approximately 5 gravity line operators) to be added to the reporting community.

If the frequency of accidents is the same for non-regulated gathering lines and gravity lines as it is for transmission lines, approximately 4 to 6 percent of these newly regulated operators will submit an accident report in any given year. Of the 23 new gathering line operators, PHMSA expects 5 accident reports to be filed per year. Of the 5 new gravity line operators, PHMSA expects 1 accident report to be filed per year. This results in an added burden of 6 new accident reports per year at 10 hours per report for a total added burden of 60 hours for accident reporting.

The final rule will also amend the Pipeline Safety Regulations (PSR) in 49 CFR 195.65 to require all owners and operators of hazardous liquid pipeline facilities, following accidents that result in hazardous liquid spills, to provide safety data sheets on those spilled hazardous liquids to the designated Federal On-Scene Coordinator and appropriate State and local emergency responders within 6 hours of a telephonic or electronic notice of the accident to the National Response Center. PHMSA expects hazardous liquid operators to file approximately 406 accident reports per year. This will result in an added burden of 406 new notifications per year. PHMSA expects that it will take operators 30 minutes to conduct the required task. This will result in an added burden of 406 records at .5 hours per record for a total added burden of 203 hours for safety data sheet notifications recordkeeping.

This information collection is being revised to account for the additional burden that will be incurred because of these new provisions.

*Affected Public:* Owners and operators of hazardous liquid pipelines.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 1,644.

*Total Annual Burden Hours:* 52,692.

*Frequency of Collection:* On occasion.

2. *Title:* Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

*OMB Control Number:* 2137–0578.

*Current Expiration Date:* 8/31/2022.

*Abstract:* 49 U.S.C. 60102 requires each operator of a pipeline facility (except master meter operators) to submit to U.S. DOT a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility or a condition that is a hazard to life, property or the environment.

This rule will require operators of both gravity lines and gathering lines to be subject to safety-related condition reporting. While there is no guarantee that each of the newly covered operators will incur a safety-related condition, it is a possibility. As a result, PHMSA plans to include an additional 28 hazardous liquid pipeline operators (23 gathering line operators and approximately 5 gravity line operators) in this reporting community. PHMSA estimates that it takes each operator 6 hours to complete a safety-related condition report. The addition of the 28 newly covered operators will result in 28 additional responses and an added burden of 168 hours (28 operators * 6 hours).

This information collection is being revised to account for the additional burden that will be incurred by newly regulated entities. Operators currently submitting annual reports will not be otherwise impacted by this rule.

*Affected Public:* Owners and operators of hazardous liquid pipelines.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 174.

*Total Annual Burden Hours:* 1,044.

*Frequency of Collection:* On occasion.

3. *Title:* Hazardous Liquid Pipeline Assessment Requirements.

*OMB Control Number:* 2137–0605.

*Current Expiration Date:* 09/30/2022.

*Abstract:* Owners and operators of hazardous liquid pipelines are required to have continual assessment and evaluation of pipeline integrity through inspection or testing, as well as remedial preventive and mitigative actions. Because of this rulemaking action, in cases where a determination about pipeline threats has not been obtained within 180 days following the date of inspection, pipeline operators are required to notify PHMSA in writing and provide an expected date when adequate information will become available. PHMSA estimates that only 1 percent of repair reports (approx. 74) will require these notifications each year. Operators are authorized to send the notification, via email, to PHMSA's Information Resources Manager. PHMSA estimates that it will take operators 30 minutes to create and send each notification resulting in an overall burden increase of 37 hours annually.

Hazardous liquid pipeline operators are also required to notify PHMSA when they are unable to assess their pipeline via an in-line inspection. Operators who choose to use an alternate assessment method must demonstrate that their pipeline is not capable of accommodating an in-line inspection tool and that the use of an alternative assessment method will provide a substantially equivalent understanding of the condition of the pipeline. PHMSA estimates that operators will submit approximately 10 notifications each year regarding these conditions. Further, PHMSA estimates that each notification will take 10 hours, which includes the time to assemble the necessary information to demonstrate that the pipeline is not capable of accommodating an ILI tool and specify that the alternative assessment method will provide a substantially equivalent understanding of the pipeline. This will result in an annual notification burden of 100 hours.

The overall annual burden increase for this information collection is 84 responses and 137 hours. PHMSA requests the title of this information collection, previously ''Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines,'' be changes to better align with the requested data.

*Affected Public:* Owners and operators of Hazardous Liquid Pipelines.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 287.

*Total Annual Burden Hours:* 325,607.

*Frequency of Collection:* Annually.

4. *Title:* Pipeline Safety: Reporting Requirements for Hazardous Liquid Pipeline Operators: Hazardous Liquid Annual Report.

*OMB Control Number:* 2137–0614.

*Current Expiration Date:* 01/31/2022.

*Abstract:* Owners and operators of hazardous liquid pipelines are required to provide PHMSA with safety-related documentation relative to the annual operation of their pipeline. The provided information is used to compile a national pipeline inventory, identify safety problems, and target inspections.

Due to provisions within this final rule, approximately 5 gravity line operators and 23 gathering line operators will be required to submit annual reports to PHMSA. PHMSA estimates the burden associated with annual reporting activities to be approximately 19 hours per report, composed of 12 hours of a compliance officer's time and 7 hours of a secretary/administrative assistant's time. The newly regulated gravity and gathering line operators will cause an added burden of 28 new annual reports per year at 19 hours per report for a total added burden of 532 hours for annual reporting.

This information collection is being revised to account for the additional burden that will be incurred by the newly affected operators. Operators currently submitting annual reports will not be otherwise impacted by this rule.

*Affected Public:* Owners and operators of hazardous liquid pipelines.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 475.

*Total Annual Burden Hours:* 8,989.

*Frequency of Collection:* Annually.

5. *Title:* National Registry of Pipeline and LNG Operators.

*OMB Control Number:* 2137–0627.

*Current Expiration Date:* 04/301/2022.

*Abstract:* The National Registry of Pipeline and LNG Operators serves as the storehouse for the reporting requirements for an operator regulated under or subject to reporting requirements of 49 CFR parts 191, 192, 193, or 195. The final rule requires operators of both gravity lines and gathering lines to be subject to various reporting requirements. Thus, approximately 5 gravity line operators and 23 gathering line operators will be required to register their pipeline with the National Pipeline Registry and apply for an Operator Identification number (OPID). PHMSA estimates that this activity will take 1 hour per operator to register.

Gravity and gathering line operators will also be required to notify PHMSA of certain changes made to their pipeline system when applicable. PHMSA estimates that 5 percent (approximately 1) of these newly regulated operators will make these notifications each year. PHMSA estimates that this activity will take 1 hour per operator.

This information collection is being revised to account for the additional burden (29 responses × 1 hour = 29 hours) that will be incurred by the newly regulated operators. Operators currently registered will not be otherwise impacted by this rule.

*Affected Public:* Natural gas, LNG, and hazardous liquid pipeline operators.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 718.

*Total Annual Burden Hours:* 718.

6. *Title:* Hazardous Liquid Operator Notifications.

*OMB Control Number:* 2137–0630.

*Current Expiration Date:* N/A.

*Abstract:* The Pipeline Safety regulations contained within 49 CFR part 195 require hazardous liquid operators to notify PHMSA in various instances. 49 CFR 195.414 requires hazardous liquid operators who are unable to inspect their pipeline facilities within 72 hours of an extreme weather event to notify the appropriate PHMSA Region Director as soon as practicable. PHMSA expects to receive 100 of these notifications annually. PHMSA believes it will take operators approximately 15 minutes (0.25 hours) to make this notification and send it to the Regional Director electronically. PHMSA expects the annual burden for this requirement to be 25 hours.

49 CFR 195.452 requires operators of pipelines that cannot accommodate an in-line inspection tool to file a petition in compliance with 49 CFR 190.9. PHMSA expects to receive 10 of these notifications annually. PHMSA expects that it will take operators 10 hours to provide records to demonstrate that their pipeline cannot accommodate an inline inspection device for an overall annual burden of 100 hours for this notification requirement.

*Affected Public:* Owners and operators of hazardous liquid pipelines.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 110.

*Total Annual Burden Hours:* 125.

*Frequency of Collection:* Annually.

Requests for copies of these information collections should be directed to Angela Hill or Cameron Satterthwaite, Office of Pipeline Safety (PHP–30), Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone (202) 366–4595.

*Comments are invited on:*

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Those desiring to comment on these information collections should send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street NW, Washington, DC 20503. Comments should be submitted on or prior to October 31, 2019. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.* OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if received within 30 days of publication.

*I. Privacy Act Statement*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or at *http://www.regulations.gov.*

*J. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 195**

Incorporation by reference, Integrity management, Pipeline safety.

In consideration of the foregoing, PHMSA is amending 49 CFR part 195 as follows:

## PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. Revise the authority citation for part 195 to read as follows:

**Authority:** 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.,* and 49 CFR 1.97.

■ 2. Amend § 195.1 by adding paragraph (a)(5) and revising paragraphs (b)(2) and (b)(4) to read as follows:

### § 195.1 Which pipelines are covered by this part?

(a) * * *

(5) For purposes of the reporting requirements in subpart B of this part, any gathering line not already covered under paragraphs (a)(1), (2), (3) or (4) of this section.

(b) * * *

(2) Except for the reporting requirements of subpart B of this part, see § 195.13, transportation of a hazardous liquid through a pipeline by gravity.

* * * * *

(4) Except for the reporting requirements of subpart B of this part, see § 195.15, transportation of petroleum through an onshore rural gathering line that does not meet the definition of a ''regulated rural gathering line'' as provided in § 195.11. This exception does not apply to gathering lines in the inlets of the Gulf of Mexico subject to § 195.413.

* * * * *

■ 3. Amend § 195.2 by revising the definition for ''*Hazardous liquid*'' to read as follows:

### § 195.2 Definitions.

* * * * *

*Hazardous liquid* means petroleum, petroleum products, anhydrous ammonia, and ethanol or other non-petroleum fuel, including biofuel, which is flammable, toxic, or would be harmful to the environment if released in significant quantities.

* * * * *

### § 195.3 [Amended]

■ 4. In § 195.3, amend paragraph (g)(3) by removing ''§ 195.591'' and adding ''§§ 195.120 and 195.591'' in its place.

■ 5. Add § 195.13 to subpart A to read as follows:

### § 195.13 What requirements apply to pipelines transporting hazardous liquids by gravity?

(a) *Scope.* Pipelines transporting hazardous liquids by gravity must comply with the reporting requirements of subpart B of this part.

(b) *Implementation period*—(1) *Annual reporting.* Comply with the annual reporting requirements in subpart B of this part by March 31, 2021.

(2) *Accident and safety-related reporting.* Comply with the accident and safety-related condition reporting requirements in subpart B of this part by January 1, 2021.

(c) *Exceptions.* (1) This section does not apply to the transportation of a hazardous liquid in a gravity line that meets the definition of a low-stress pipeline, travels no farther than 1 mile from a facility boundary, and does not cross any waterways used for commercial navigation.

(2) The reporting requirements in §§ 195.52, 195.61, and 195.65 do not apply to the transportation of a hazardous liquid in a gravity line.

(3) The drug and alcohol testing requirements in part 199 of this subchapter do not apply to the transportation of a hazardous liquid in a gravity line.

■ 6. Add § 195.15 to subpart A to read as follows:

### § 195.15 What requirements apply to reporting-regulated-only gathering lines?

(a) *Scope.* Gathering lines that do not otherwise meet the definition of a regulated rural gathering line in § 195.11 and any gathering line not already covered under § 195.1(a)(1), (2), (3) or (4) must comply with the reporting requirements of subpart B of this part.

(b) *Implementation period*—(1) *Annual reporting.* Operators must comply with the annual reporting requirements in subpart B of this part by March 31, 2021.

(2) *Accident and safety-related condition reporting.* Operators must comply with the accident and safety-related condition reporting requirements in subpart B of this part by January 1, 2021.

(c) *Exceptions.* (1) This section does not apply to those gathering lines that are otherwise excepted under § 195.1(b)(3), (7), (8), (9), or (10).

(2) The reporting requirements in §§ 195.52, 195.61, and 195.65 do not apply to the transportation of a hazardous liquid in a gathering line that is specified in paragraph (a) of this section.

(3) The drug and alcohol testing requirements in part 199 of this subchapter do not apply to the transportation of a hazardous liquid in a gathering line that is specified in paragraph (a) of this section.

■ 7. Add § 195.65 to subpart B to read as follows:

### § 195.65 Safety data sheets.

(a) Each owner or operator of a hazardous liquid pipeline facility, following an accident involving a pipeline facility that results in a hazardous liquid spill, must provide safety data sheets on any spilled hazardous liquid to the designated Federal On-Scene Coordinator and appropriate State and local emergency responders within 6 hours of a telephonic or electronic notice of the accident to the National Response Center.

(b) Definitions. In this section:

(1) *Federal On-Scene Coordinator.* The term ''Federal On-Scene Coordinator'' has the meaning given such term in section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

(2) *National Response Center.* The term ''National Response Center'' means the center described under 40 CFR 300.125(a).

(3) *Safety data sheet.* The term ''safety data sheet'' means a safety data sheet required under 29 CFR 1910.1200.

■ 8. Revise § 195.120 to read as follows:

### § 195.120 Passage of internal inspection devices.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, each new pipeline and each main line section of a pipeline where the line pipe, valve, fitting or other line component is replaced must be designed and constructed to accommodate the passage of instrumented internal inspection devices in accordance with NACE SP0102 (incorporated by reference, *see* § 195.3).

(b) *Exceptions.* This section does not apply to:

(1) Manifolds;

(2) Station piping such as at pump stations, meter stations, or pressure reducing stations;

(3) Piping associated with tank farms and other storage facilities;

(4) Cross-overs;

(5) Pipe for which an instrumented internal inspection device is not commercially available; and

(6) Offshore pipelines, other than lines 10 inches (254 millimeters) or greater in nominal diameter, that transport liquids to onshore facilities.

(c) *Impracticability.* An operator may file a petition under § 190.9 for a finding that the requirements in paragraph (a) of this section should not be applied to a pipeline for reasons of impracticability.

(d) *Emergencies.* An operator need not comply with paragraph (a) of this section in constructing a new or replacement segment of a pipeline in an emergency. Within 30 days after discovering the emergency, the operator must file a petition under § 190.9 for a finding that requiring the design and construction of the new or replacement pipeline segment to accommodate passage of instrumented internal inspection devices would be impracticable as a result of the emergency. If PHMSA denies the petition, within 1 year after the date of the notice of the denial, the operator must modify the new or replacement pipeline segment to allow passage of instrumented internal inspection devices.

■ 9. Revise § 195.134 to read as follows:

**§ 195.134 Leak detection.**

(a) *Scope.* This section applies to each hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid).

(b) *General.* (1) For each pipeline constructed prior to October 1, 2019. Each pipeline must have a system for detecting leaks that complies with the requirements in § 195.444 by October 1, 2024.

(2) For each pipeline constructed on or after October 1, 2019. Each pipeline must have a system for detecting leaks that complies with the requirements in § 195.444 by October 1, 2020.

(c) *CPM leak detection systems.* A new computational pipeline monitoring (CPM) leak detection system or replaced component of an existing CPM system must be designed in accordance with the requirements in section 4.2 of API RP 1130 (incorporated by reference, see § 195.3) and any other applicable design criteria in that standard.

(d) *Exception.* The requirements of paragraph (b) of this section do not apply to offshore gathering or regulated rural gathering lines.

■ 10. In § 195.401, add paragraph (b)(3) to read as follows.

**§ 195.401 General requirements.**

* * * * *

(b) * * *

(3) *Prioritizing repairs.* An operator must consider the risk to people, property, and the environment in prioritizing the correction of any conditions referenced in paragraphs (b)(1) and (2) of this section.

* * * * *

■ 11. Add § 195.414 to read as follows:

**§ 195.414 Inspections of pipelines in areas affected by extreme weather and natural disasters.**

(a) *General.* Following an extreme weather event or natural disaster that has the likelihood of damage to infrastructure by the scouring or movement of the soil surrounding the pipeline, such as a named tropical storm or hurricane; a flood that exceeds the river, shoreline, or creek high-water banks in the area of the pipeline; a landslide in the area of the pipeline; or an earthquake in the area of the pipeline, an operator must inspect all potentially affected pipeline facilities to detect conditions that could adversely affect the safe operation of that pipeline.

(b) *Inspection method.* An operator must consider the nature of the event and the physical characteristics, operating conditions, location, and prior history of the affected pipeline in determining the appropriate method for performing the initial inspection to determine the extent of any damage and the need for the additional assessments required under paragraph (a) of this section.

(c) *Time period.* The inspection required under paragraph (a) of this section must commence within 72 hours after the cessation of the event, defined as the point in time when the affected area can be safely accessed by the personnel and equipment required to perform the inspection as determined under paragraph (b) of this section. In the event that the operator is unable to commence the inspection due to the unavailability of personnel or equipment, the operator must notify the appropriate PHMSA Region Director as soon as practicable.

(d) *Remedial action.* An operator must take prompt and appropriate remedial action to ensure the safe operation of a pipeline based on the information obtained as a result of performing the inspection required under paragraph (a) of this section. Such actions might include, but are not limited to:

(1) Reducing the operating pressure or shutting down the pipeline;

(2) Modifying, repairing, or replacing any damaged pipeline facilities;

(3) Preventing, mitigating, or eliminating any unsafe conditions in the pipeline right-of-way;

(4) Performing additional patrols, surveys, tests, or inspections;

(5) Implementing emergency response activities with Federal, State, or local personnel; and

(6) Notifying affected communities of the steps that can be taken to ensure public safety.

■ 12. Add § 195.416 to read as follows:

**§ 195.416 Pipeline assessments.**

(a) *Scope.* This section applies to onshore line pipe that can accommodate inspection by means of in-line inspection tools and is not subject to the integrity management requirements in § 195.452.

(b) *General.* An operator must perform an initial assessment of each of its pipeline segments by October 1, 2029, and perform periodic assessments of its pipeline segments at least once every 10 calendar years from the year of the prior assessment or as otherwise necessary to ensure public safety or the protection of the environment.

(c) *Method.* Except as specified in paragraph (d) of this section, an operator must perform the integrity assessment for the range of relevant threats to the pipeline segment by the use of an appropriate in-line inspection tool(s). When performing an assessment using an in-line inspection tool, an operator must comply with § 195.591. An operator must explicitly consider uncertainties in reported results (including tool tolerance, anomaly findings, and unity chart plots or other equivalent methods for determining uncertainties) in identifying anomalies. If this is impracticable based on operational limits, including operating pressure, low flow, and pipeline length or availability of in-line inspection tool technology for the pipe diameter, then the operator must perform the assessment using the appropriate method(s) in paragraphs (c)(1), (2), or (3) of this section for the range of relevant threats being assessed. The methods an operator selects to assess low-frequency electric resistance welded pipe, pipe with a seam factor less than 1.0 as defined in § 195.106(e) or lap-welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity, cracking, and of detecting corrosion and deformation anomalies. The following alternative assessment methods may be used as specified in this paragraph:

(1) A pressure test conducted in accordance with subpart E of this part;

(2) External corrosion direct assessment in accordance with § 195.588; or

(3) Other technology in accordance with paragraph (d).

(d) *Other technology.* Operators may elect to use other technologies if the operator can demonstrate the technology can provide an equivalent understanding of the condition of the line pipe for threat being assessed. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment by:

(1) Sending the notification, along with the information required to demonstrate compliance with this paragraph, to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or

(2) Sending the notification, along with the information required to demonstrate compliance with this paragraph, to the Information Resources Manager by facsimile to (202) 366–7128.

(3) Prior to conducting the ''other technology'' assessments, the operator must receive a notice of ''no objection'' from the PHMSA Information Services Manager or Designee.

(e) *Data analysis.* A person qualified by knowledge, training, and experience must analyze the data obtained from an assessment performed under paragraph (b) of this section to determine if a condition could adversely affect the safe operation of the pipeline. Operators must consider uncertainties in any reported results (including tool tolerance) as part of that analysis.

(f) *Discovery of condition.* For purposes of § 195.401(b)(1), discovery of a condition occurs when an operator has adequate information to determine that a condition presenting a potential threat to the integrity of the pipeline exists. An operator must promptly, but no later than 180 days after an assessment, obtain sufficient information about a condition to make that determination required under paragraph (e) of this section, unless the operator can demonstrate the 180-day interval is impracticable. If the operator believes that 180 days are impracticable to make a determination about a condition found during an assessment, the pipeline operator must notify PHMSA and provide an expected date when adequate information will become available. This notification must be made in accordance with § 195.452 (m).

(g) *Remediation.* An operator must comply with the requirements in § 195.401 if a condition that could adversely affect the safe operation of a pipeline is discovered in complying with paragraphs (e) and (f) of this section.

(h) *Consideration of information.* An operator must consider all relevant information about a pipeline in complying with the requirements in paragraphs (a) through (g) of this section.

■ 13. Revise § 195.444 to read as follows:

**§ 195.444 Leak detection.**

(a) *Scope.* Except for offshore gathering and regulated rural gathering pipelines, this section applies to all hazardous liquid pipelines transporting liquid in single phase (without gas in the liquid).

(b) *General.* A pipeline must have an effective system for detecting leaks in accordance with §§ 195.134 or 195.452, as appropriate. An operator must evaluate the capability of its leak detection system to protect the public, property, and the environment and modify it as necessary to do so. At a minimum, an operator's evaluation must consider the following factors—length and size of the pipeline, type of product carried, the swiftness of leak detection, location of nearest response personnel, and leak history.

(c) *CPM leak detection systems.* Each computational pipeline monitoring (CPM) leak detection system installed on a hazardous liquid pipeline must comply with API RP 1130 (incorporated by reference, see § 195.3) in operating, maintaining, testing, record keeping, and dispatcher training of the system.

■ 14. Amend § 195.452 by:

■ a. Revising paragraphs (a)(3) and (b)(1), the introductory text of paragraph (c)(1)(i), paragraphs (c)(1)(i)(A), (d), (e)(1)(vii), and (g), the introductory text of paragraph (h)(1), and paragraph (h)(2);

■ b. Amending paragraph (i)(2)(viii) by removing the period at the end of the sentence and adding in its place a '';''.

■ c. Adding paragraph (i)(2)(ix);

■ d. Revising paragraph (j)(2);

■ e. Adding paragraphs (n) and (o).

The revisions and additions read as follows:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a) * * *

(3) Category 3 includes pipelines constructed or converted after May 29, 2001, and low-stress pipelines in rural areas under § 195.12.

* * * * *

(b) * * *

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline in the first column of the following table no later than the date in the second column:

| Pipeline | Date |
|---|---|
| Category 1 | March 31, 2002. |
| Category 2 | February 18, 2003. |
| Category 3 | Date the pipeline begins operation or as provided in § 195.12 for low stress pipelines in rural areas. |

* * * * *

(c) * * *

(1) * * *

(i) The methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by in-line inspection tool(s) described in paragraph (c)(1)(i)(A) of this section for the range of relevant threats to the pipeline segment. If it is impracticable based upon the construction of the pipeline (*e.g.,* diameter changes, sharp bends, and elbows) or operational limits including operating pressure, low flow, pipeline length, or availability of in-line inspection tool technology for the pipe diameter, then the operator must use the appropriate method(s) in paragraphs (c)(1)(i)(B), (C), or (D) of this section for the range of relevant threats to the pipeline segment. The methods an operator selects to assess low-frequency electric resistance welded pipe, pipe with a seam factor less than 1.0 as defined in § 195.106(e) or lap-welded pipe susceptible to longitudinal seam failure, must be capable of assessing seam integrity, cracking, and of detecting corrosion and deformation anomalies.

(A) In-line inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges, and grooves. For pipeline segments with an identified or probable risk or threat related to cracks (such as at pipe body or weld seams) based on the risk factors specified in paragraph (e), an operator must use an in-line inspection tool or tools capable of detecting crack anomalies. When performing an assessment using an in-line inspection tool, an operator must comply with § 195.591. An operator using this method must explicitly consider uncertainties in reported results (including tool tolerance, anomaly findings, and unity chart plots or equivalent for determining uncertainties) in identifying anomalies;

* * * * *

(d) *When must operators complete baseline assessments?*

(1) *All pipelines.* An operator must complete the baseline assessment before a new or conversion-to-service pipeline

begins operation through the development of procedures, identification of high consequence areas, and pressure testing of could-affect high consequence areas in accordance with § 195.304.

(2) *Newly identified areas.* If an operator obtains information (whether from the information analysis required under paragraph (g) of this section, Census Bureau maps, or any other source) demonstrating that the area around a pipeline segment has changed to meet the definition of a high consequence area (*see* § 195.450), that area must be incorporated into the operator's baseline assessment plan within 1 year from the date that the information is obtained. An operator must complete the baseline assessment of any pipeline segment that could affect a newly identified high consequence area within 5 years from the date an operator identifies the area.

* * * * *

(e) * * *

(1) * * *

(vii) Local environmental factors that could affect the pipeline (*e.g.,* seismicity, corrosivity of soil, subsidence, climatic);

* * * * *

(g) *What is an information analysis?* In periodically evaluating the integrity of each pipeline segment (*see* paragraph (j) of this section), an operator must analyze all available information about the integrity of its entire pipeline and the consequences of a possible failure along the pipeline. Operators must continue to comply with the data integration elements specified in § 195.452(g) that were in effect on October 1, 2018, until October 1, 2022. Operators must begin to integrate all the data elements specified in this section starting October 1, 2020, with all attributes integrated by October 1, 2022. This analysis must:

(1) Integrate information and attributes about the pipeline that include, but are not limited to:

(i) Pipe diameter, wall thickness, grade, and seam type;

(ii) Pipe coating, including girth weld coating;

(iii) Maximum operating pressure (MOP) and temperature;

(iv) Endpoints of segments that could affect high consequence areas (HCAs);

(v) Hydrostatic test pressure including any test failures or leaks—if known;

(vi) Location of casings and if shorted;

(vii) Any in-service ruptures or leaks—including identified causes;

(viii) Data gathered through integrity assessments required under this section;

(ix) Close interval survey (CIS) survey results;

(x) Depth of cover surveys;

(xi) Corrosion protection (CP) rectifier readings;

(xii) CP test point survey readings and locations;

(xiii) AC/DC and foreign structure interference surveys;

(xiv) Pipe coating surveys and cathodic protection surveys.

(xv) Results of examinations of exposed portions of buried pipelines (*i.e.,* pipe and pipe coating condition, see § 195.569);

(xvi) Stress corrosion cracking (SCC) and other cracking (pipe body or weld) excavations and findings, including in-situ non-destructive examinations and analysis results for failure stress pressures and cyclic fatigue crack growth analysis to estimate the remaining life of the pipeline;

(xvii) Aerial photography;

(xviii) Location of foreign line crossings;

(xix) Pipe exposures resulting from repairs and encroachments;

(xx) Seismicity of the area; and

(xxi) Other pertinent information derived from operations and maintenance activities and any additional tests, inspections, surveys, patrols, or monitoring required under this part.

(2) Consider information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline;

(3) Consider how a potential failure would affect high consequence areas, such as location of a water intake.

(4) Identify spatial relationships among anomalous information (*e.g.,* corrosion coincident with foreign line crossings; evidence of pipeline damage where aerial photography shows evidence of encroachment). Storing the information in a geographic information system (GIS), alone, is not sufficient. An operator must analyze for interrelationships among the data.

(h) * * *

(1) *General requirements.* An operator must take prompt action to address all anomalous conditions in the pipeline that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity, as required by this part. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. An operator must comply with all other applicable requirements in this part in remediating a condition. Each operator must, in repairing its pipeline systems, ensure that the repairs are made in a safe and timely manner and are made so as to prevent damage to persons, property, or the environment. The calculation method(s) used for anomaly evaluation must be applicable for the range of relevant threats.

* * * * *

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information to determine that a condition presenting a potential threat to the integrity of the pipeline exists. An operator must promptly, but no later than 180 days after an assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate the 180-day interval is impracticable. If the operator believes that 180 days are impracticable to make a determination about a condition found during an assessment, the pipeline operator must notify PHMSA in accordance with paragraph (m) of this section and provide an expected date when adequate information will become available.

* * * * *

(i) * * *

(2) * * *

(ix) Seismicity of the area.

* * * * *

(j) * * *

(2) *Verifying covered segments.* An operator must verify the risk factors used in identifying pipeline segments that could affect a high consequence area on at least an annual basis not to exceed 15 months (Appendix C of this part provides additional guidance on factors that can influence whether a pipeline segment could affect a high consequence area). If a change in circumstance indicates that the prior consideration of a risk factor is no longer valid or that an operator should consider new risk factors, an operator must perform a new integrity analysis and evaluation to establish the endpoints of any previously identified covered segments. The integrity analysis and evaluation must include consideration of the results of any baseline and periodic integrity assessments (*see* paragraphs (b), (c), (d), and (e) of this section), information analyses (*see* paragraph (g) of this section), and decisions about remediation and preventive and mitigative actions (*see* paragraphs (h) and (i) of this section). An operator must complete the first annual verification

under this paragraph no later than July 1, 2021.

* * * * *

(n) *Accommodation of instrumented internal inspection devices—*

(1) *Scope.* This paragraph does not apply to any pipeline facilities listed in § 195.120(b).

(2) *General.* An operator must ensure that each pipeline is modified to accommodate the passage of an instrumented internal inspection device by July 2, 2040.

(3) *Newly identified areas.* If a pipeline could affect a newly identified high consequence area (*see* paragraph (d)(2) of this section) after July 2, 2035, an operator must modify the pipeline to accommodate the passage of an instrumented internal inspection device within 5 years of the date of identification or before performing the baseline assessment, whichever is sooner.

(4) *Lack of accommodation.* An operator may file a petition under § 190.9 of this chapter for a finding that the basic construction (*i.e.,* length, diameter, operating pressure, or location) of a pipeline cannot be modified to accommodate the passage of an instrumented internal inspection device or that the operator determines it would abandon or shut-down a pipeline as a result of the cost to comply with the requirement of this section.

(5) *Emergencies.* An operator may file a petition under § 190.9 of this chapter for a finding that a pipeline cannot be modified to accommodate the passage of an instrumented internal inspection device as a result of an emergency. An operator must file such a petition within 30 days after discovering the emergency. If the petition is denied, the operator must modify the pipeline to allow the passage of an instrumented internal inspection device within 1 year after the date of the notice of the denial.

■ 15. Add § 195.454 to Subpart F to read as follows:

**§ 195.454 Integrity assessments for certain underwater hazardous liquid pipeline facilities located in high consequence areas.**

Notwithstanding any pipeline integrity management program or integrity assessment schedule otherwise required under § 195.452, each operator of any underwater hazardous liquid pipeline facility located in a high consequence area that is not an offshore pipeline facility and any portion of which is located at depths greater than 150 feet under the surface of the water must ensure that:

(a) Pipeline integrity assessments using internal inspection technology appropriate for the integrity threats to the pipeline are completed not less often than once every 12 months, and;

(b) Pipeline integrity assessments using pipeline route surveys, depth of cover surveys, pressure tests, external corrosion direct assessment, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility, are completed on a schedule based on the risk that the pipeline facility poses to the high consequence area in which the pipeline facility is located.

Issued in Washington, DC, on September 17, 2019, under authority delegated in 49 CFR part 1.97.

**Howard R. Elliott,**

*Administrator.*

[FR Doc. 2019–20458 Filed 9–30–19; 8:45 am]

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Part IV

## Department of Agriculture

Food and Safety and Inspection Service

9 CFR Parts 301, 309, and 31

Modernization of Swine Slaughter Inspection; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Parts 301, 309, and 310**

**[Docket No. FSIS–2016–0017]**

**RIN 0583–AD62**

## Modernization of Swine Slaughter Inspection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to establish an optional new inspection system for market hog slaughter establishments that has been demonstrated to provide public health protection at least equivalent to the existing inspection system. Market hog slaughter establishments that do not choose to operate under the new swine inspection system may continue to operate under their existing inspection system. The Agency is also making several changes to the regulations that will affect all establishments that slaughter swine, regardless of the inspection system under which they operate or the age, size, or class of swine. These changes will allow all swine slaughter establishments to develop sampling plans that are more tailored to their specific operations, and thus more effective in monitoring their specific process control, unlike the current requirements in the regulations.

**DATES:**

*Effective date:* December 2, 2019.

*Notification date:* All market hog establishments will initially have until March 30, 2020 to notify their FSIS District Office (DO) of their intent to operate under the New Swine Slaughter Inspection System (NSIS). Establishments that do not notify their DO of their intent by March 30, 2020 will be deemed to have chosen to continue operating under their existing inspection system. For additional information, see section II.G. Implementation.

*Applicability dates:* The regulations that prescribe procedures for controlling contamination throughout the slaughter and dressing process in 9 CFR 310.18(c), and the regulations that prescribe recordkeeping requirements in 9 CFR 310.18(d), will be applicable as follows:

(1) In large establishments, defined as all establishments with 500 or more employees, on December 30, 2019;

(2) In small establishments, defined as all establishments with 10 or more employees but fewer than 500 employees, on January 29, 2020; and

(3) In very small establishments, defined as all establishments with fewer than 10 employees or annual sales of less than $2.5 million, on March 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Roberta Wagner, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

On February 1, 2018, FSIS published a proposed rule to modernize swine slaughter inspection (83 FR 4780). This final rule adopts, with modifications, the provisions in the proposed rule.

FSIS is establishing an optional new inspection system for market hog slaughter establishments, NSIS, informed by the Agency's experiences under its Hazard Analysis and Critical Control Point (HACCP)-Based Inspection Models Project (HIMP). FSIS is establishing NSIS to improve the effectiveness of market hog slaughter inspection; make better use of the Agency's resources; and remove unnecessary regulatory obstacles to industry innovation by revoking maximum line speeds and allowing establishments flexibility to reconfigure evisceration lines. NSIS may also facilitate pathogen reduction in pork products and improve compliance with the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*).

Because this final rule requires establishment personnel in NSIS establishments to sort and remove unfit animals before ante-mortem inspection by FSIS inspectors and trim and identify defects on carcasses and parts before post-mortem inspection by FSIS inspectors, the Agency's inspectors will be presented with healthier animals and carcasses that have fewer defects, allowing them to conduct a more efficient inspection of each animal and each carcass. As a result, under NSIS, FSIS can assign fewer inspectors to online inspection, freeing up Agency resources to conduct more offline inspection activities that are more effective in ensuring food safety, such as verifying compliance with sanitation and HACCP, as well as humane handling requirements.

Key elements of the NSIS include: (1) Requiring establishment personnel to sort and remove unfit animals before ante-mortem inspection by FSIS inspectors and to trim and identify defects on carcasses and parts before post-mortem inspection by FSIS inspectors; (2) requiring establishment personnel to identify animals or carcasses, that they have sorted and removed for disposal before FSIS inspection, with a unique tag, tattoo, or similar device, and to develop, implement, and maintain written procedures in their HACCP system to ensure that animals and carcasses sorted and removed for disposal do not enter the human food supply and are properly disposed of according to 9 CFR part 314; (3) requiring establishments to maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal; (4) requiring establishment personnel to immediately notify FSIS inspectors if they identify, while conducting sorting activities, an animal or carcass that they suspect has a reportable or foreign animal disease (*e.g.,* African swine fever, classical swine fever, or Nipah virus encephalitis); (5) shifting Agency resources to conduct more offline inspection activities that are more effective in ensuring food safety, which allows for up to two offline verification inspectors per line per shift and reduces the number of online inspectors to a maximum of three per line per shift; (6) requiring establishments to maintain records documenting that products resulting from their slaughter operations meet the new definition of ready-to-cook (RTC) pork product, which is any slaughtered pork product sufficiently free from bile, hair, scurf, dirt, hooves, toe nails, claws, bruises, edema, scabs, skin lesions, icterus, foreign material, and odor which is suitable for cooking without need of further processing; and (7) revoking maximum line speeds and authorizing establishments to determine their own line speeds based on their ability to maintain process control for preventing fecal contamination and meeting microbial performance measures for carcasses during the slaughter operation. FSIS retains the ability to slow or stop the line, as needed (9 CFR 310.26(c)). Based on its experience under HIMP, the NSIS is unlikely to result in a higher prevalence of *Salmonella* on market hog carcasses and may result in a lower prevalence of *Salmonella* on market hog carcasses, which in turn may lead to fewer human illnesses. In addition, FSIS expects that the new inspection system will improve animal welfare and compliance with the HMSA because more FSIS resources will be available to verify the humane handling of animals.

Under the NSIS, establishment sorters will be required to incise mandibular lymph nodes and palpate the viscera to

detect the presence of animal diseases (*e.g., Mycobacterium (M.) Avium*) as part of their sorting activities before FSIS post-mortem inspection (9 CFR 310.26(b)). The Agency determined that it needs more information on the public health impact of these sorting activities before it can allow establishments to decide, on a lot-by-lot basis, whether establishment sorters need to incise lymph nodes and palpate the viscera to detect the presence of animal diseases. To gather this information, FSIS has decided to allow establishments that operate under the NSIS to apply for waivers to 9 CFR 310.26(b) under 9 CFR 303.1(h). As a condition of the waiver, establishments operating under waivers are required to submit data to FSIS. FSIS then assesses that data to determine whether changes to the regulations are appropriate and necessary. The Agency will announce the criteria for these waivers in a future **Federal Register** document.

Under this final rule, market hog slaughter establishments that do not choose to operate under the NSIS may continue to operate under traditional inspection (*i.e.,* inspection described in current regulations). Establishments that slaughter swine other than market hogs are not eligible to operate under the NSIS unless they obtain a waiver under the *Salmonella* Initiative Program (SIP) (79 FR 633, January 6, 2014).

Under this final rule, FSIS is also making several changes that will affect all establishments that slaughter swine, regardless of the inspection system under which they operate. Specifically, all official swine slaughter establishments must develop, implement, and maintain in their HACCP plans, sanitation standard operating procedures (sanitation SOPs), or other prerequisite programs (hereafter collectively referred to as their ''HACCP systems''), written procedures to prevent the contamination of carcasses and parts by enteric pathogens, and visible fecal material, ingesta, and milk throughout the entire slaughter and dressing operation. These procedures must include sampling and analysis for microbial organisms to monitor process control for enteric pathogens, as well as written procedures to prevent visible fecal material, ingesta, and milk contamination.

As part of their written procedures, establishments will be required to collect and test two carcass samples for microbial organisms, one at pre-evisceration and one at post-chill (*i.e.,* the point in the slaughter process after the carcass has chilled in the cooler and after all slaughter interventions are completed), or, for very low-volume establishments, a single post-chill carcass sample. Establishments that bone their products before chilling (*i.e.,* hot-boned products) will be required to collect the pre-evisceration sample and a sample after the final wash instead of at post-chill, because these products are not chilled before further processing.

Under this final rule, establishments, except for very low-volume establishments, are required to collect carcass samples and test for microbial organisms pre-evisceration and post-chill, or, for hot-boned products, pre-evisceration and after the final wash, at a frequency of once per 1,000 carcasses. Very low-volume establishments are required to collect at least one carcass sample during each week of operation starting June 1 of each year. If, after consecutively collecting and testing 13 weekly carcass samples, very low-volume establishments can demonstrate that they are not exceeding their upper control limit for microbial organisms and that they are effectively maintaining process control, they can modify their sampling plans to collect samples less frequently. FSIS provides more information on upper control limits in its guideline titled *Developing Effective Microbiological Sampling Programs in Swine Slaughter Establishments to Assess Process Control and Sanitary Conditions* (hereafter referred to as the sampling guideline). The sampling guideline is available on FSIS's website at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index.*

This final rule rescinds the current requirement that swine establishments test carcasses for generic *E. coli* post chill to monitor process control and replaces this requirement with the new testing requirements described above. The new testing requirements will allow establishments to develop sampling plans that are more tailored to their specific operation, and thus more effective in monitoring their specific process control than the current generic *E. coli* criteria. This final rule also removes the codified *Salmonella* pathogen reduction performance standard for hogs (carcasses) because verifying the codified standard was not a good use of Agency resources. As FSIS explained in the proposed rule (83 FR 4780, 4786), the Agency discontinued its *Salmonella* verification sampling program for market hogs in 2011 because the estimated prevalence of *Salmonella* on hog carcasses was low, and FSIS did not find enough pathogen positives to justify the resources needed (*e.g.,* time and supplies) to conduct carcass swabbing.

This final rule does not allow establishments to collect samples for microbial organisms at alternative sampling locations or frequencies, as was proposed. FSIS made this change from the proposed rule in response to comments that it may be too difficult for inspection personnel to review and verify sampling plans with alternative sampling locations or frequencies. Establishments that currently operate under SIP waivers from the former generic *E. coli* regulations may continue to conduct process control sampling at the alternative frequencies provided for in their waivers. All other SIP waivers (*e.g.,* waivers for 9 CFR 310.1(b)(3)—line speed; 9 CFR 310.25(b)—Salmonella performance standards; 9 CFR 310.18(a)—contamination of organs; and 9 CFR 310.14—handling of bruised parts) will end. FSIS will allow other establishments that would like to experiment with alternative sampling locations and frequencies to submit waiver requests under the SIP to FSIS. FSIS will announce new waiver criteria in a future **Federal Register** document. This final rule also does not require swine slaughter establishments to develop, implement, and maintain in their HACCP systems written procedures to prevent contamination of the pre-operational environment by enteric pathogens, as was proposed. FSIS has decided to withdraw this part of the proposal until the Agency considers its options and timing for gathering more data on contamination in the pre-operational environment. A summary of changes to the proposed rule is included below under section I. Background.

In Table 1 below, FSIS presents the estimated costs and benefits of the final rule. The regulatory impact analysis section below contains an explanation of the assumptions, provides alternative adoption scenarios, and includes a discussion of the uncertainty surrounding the net benefits associated with how much of the industry will choose to adopt NSIS.

TABLE 1—NET COSTS AND (BENEFITS)

[M$]

| | Number of establishments | One-time | Recurring |
|---|---|---|---|
| Costs to Industry | | $3.14 | $22.72 |
| Voluntary * | ** 40 | 0.84 | 22.15 |
| Mandatory | 612 | 2.30 | 0.58 |
| Health Benefits *** | | | (9.33) |
| Industrial Efficiency | | | (87.64) |
| Impacts to Agency's Budget | | 2.80 | (8.73) |

Totals

| | |
|---|---|
| One-Time Cost | $5.94 |
| Recurring Cost | (82.98) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | (62.56) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | (60.00) |

* Further explanation and details on the NSIS adoption rate are provided in section G. Potential Cost of the Final Rule, Table 6: NSIS Adoption Rate and section J. Net Benefits, Table 26: Quantified Cost and (Benefits) of Various Adoption Rates

** Note, this includes 5 HIMP establishments, which are not expected to incur any costs or benefits associated with the NSIS.

*** Further explanation and details on the range of health benefits have been provided in section H. Potential Benefits of the Final Rule, Table 18: Health Benefits from Averted Cases of *Salmonella.* The value of health benefits ranges from a $6.33 million decrease to a $24.62 million increase in health benefits, with a mean increase in benefits of $9.33 million, assuming a cost per illness of $3,682.

**** Note, some of the totals may not equal the sum due to rounding.

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## I. Background

FSIS began experimenting with new approaches to slaughter inspection based on HACCP principles shortly after publishing the Pathogen Reduction/HACCP rule in 1996. In 1997, the Agency developed the HIMP pilot study to determine whether applying new government slaughter inspection procedures, with new establishment responsibilities, could promote industry innovation and provide at least the same food safety and consumer protection as the other available slaughter inspection systems. FSIS initiated the HIMP pilot study in 20 young chicken, five young turkey, and five market hog establishments on a waiver basis.

In 2014, the Agency amended the poultry products inspection regulations to establish an optional new inspection system for young chicken and all turkey slaughter establishments informed by the Agency's experiences under HIMP (79 FR 49566, August 21, 2014). The New Poultry Inspection System (NPIS) was designed to facilitate pathogen reduction in poultry products, improve the effectiveness of poultry slaughter inspection, make better use of the Agency's resources, and remove unnecessary regulatory obstacles to innovation.

In addition to establishing the NPIS for young chickens and turkeys, FSIS also amended the poultry products inspection regulations that apply to all establishments that slaughter poultry other than ratites. The new requirements ensure that all poultry slaughter establishments implement appropriate measures in their HACCP systems to prevent contamination of carcasses and parts by enteric pathogens and visible fecal material throughout the entire slaughter operation and ensure that both FSIS and establishments have the documentation they need to verify the effectiveness of these measures on an ongoing basis.

*Proposed Rule*

On February 1, 2018, FSIS proposed to amend the meat inspection regulations to establish an optional new slaughter inspection system for market hog establishments (83 FR 4780). FSIS also proposed several changes to the regulations that would affect all establishments that slaughter swine, regardless of the inspection system under which they operate or the age, size, or class of swine.

The proposed rule's comment period closed on May 2, 2018, 90 days after its publication. After reviewing comments on the proposed rule, FSIS is finalizing, with some changes, the provisions in the February 2018 proposed rule. In this final rule, the Agency is modifying its proposal to:

- Establish a phased approach to implement the NSIS;
- Establish separate applicability dates for large, small, and very small establishments to comply with the provisions in the rule that prescribe the new recordkeeping and microbiological sampling requirements that will apply to all establishments that slaughter swine. The applicability dates will provide additional time for small and very small establishments to comply with these provisions;
- Revise the disposal requirements to require establishments operating under the NSIS to develop, implement, and maintain written procedures in their HACCP systems to ensure that animals and carcasses that have been sorted and removed for disposal do not enter the human food supply and are properly disposed of according to 9 CFR part 314;
- Require establishments operating under the NSIS to maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal and make these records available for review and evaluation by FSIS;
- Clarify that all establishments operating under the NSIS must provide a mirror at the carcass inspection station;
- Clarify that establishments that bone their products before chilling (*i.e.,* hot-boned products) must collect a carcass sample pre-evisceration and after the final wash instead of at post-chill. These establishments must also collect a sample at the pre-evisceration point in the process;

• Withdraw the proposal to allow establishments to use alternative sampling locations and sampling frequencies;

• Revise the sampling regulations to require very small establishments that slaughter more than 20,000 swine, or a combination of swine and other livestock exceeding 6,000 cattle and 20,000 total of all livestock to collect two carcass samples, one at pre-evisceration and one at post-chill, at a frequency of 1 per 1,000 carcasses, instead of a single post-chill sample;

• Require establishment sorters to incise mandibular lymph nodes and palpate the viscera to detect the presence of animal diseases (*e.g., M. Avium*) as part of their sorting activities before FSIS post-mortem inspection;

• Revise the definition of ''RTC pork product'' to clarify that the standard is a performance standard for non-food safety defects and not a zero-tolerance standard; and

• Withdraw the proposed requirement for swine slaughter establishments to develop, implement, and maintain in their HACCP systems written procedures to prevent contamination of the pre-operational environment by enteric pathogens.

*Hog HIMP Report*

The proposed rule was informed by the Agency's comprehensive analysis of data collected from HIMP market hog establishments. In 2014, the Agency evaluated inspection findings in market hog slaughter establishments participating in HIMP to determine whether the HIMP inspection system performs as well as the existing inspection system in terms of safety and wholesomeness of the products produced and of overall consumer protection. FSIS summarized its findings in its report titled ''Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs'' (hereafter the ''Hog HIMP Report'') [1] and in the proposed rule (83 FR 4780, 4789). The Hog HIMP Report concluded that market hog slaughter establishments participating in HIMP are performing as well as comparable large non-HIMP market hog establishments.

The Hog HIMP Report is based on two time periods: The years CY2006–CY2010 and the years CY2012–CY2013. The evaluation compared 5 HIMP market hog establishments with a comparison set of 21 non-HIMP market hog slaughter establishments selected to be comparable with HIMP market hog establishments with respect to production volume, line speed, and days of slaughter operation.

The Hog HIMP Report found that HIMP market hog establishments received more off-line food safety related inspection verification checks than the traditional non-HIMP market hog establishments. HIMP market hog establishments had higher compliance with Sanitation SOP and HACCP regulations, lower levels of non-food safety defects, equivalent or better *Salmonella* verification testing positive rates than traditional non-HIMP market hog establishments, and lower levels of violative chemical residues. The Hog HIMP Report also found that under HIMP, market hog establishments received an increased level of Sanitation SOP and HACCP inspection. Based on these findings, HIMP has been demonstrated to provide public health protection at least equivalent to the traditional inspection system.

*Risk Assessment*

The proposed rule was also informed by FSIS's *Assessment of the Potential Change in Human Risk of Salmonella Illnesses Associated with Modernizing Inspection of Market Hog Slaughter Establishments.* The risk assessment [2] used available data from FSIS's microbiological baseline studies [3] and the Agency's *Salmonella* verification results from swine slaughter establishments. FSIS employed a stochastic simulation model using multi-variable logistic regressions to identify correlations between (1) the numbers of offline food-safety inspection procedures, both scheduled and unscheduled, along with the numbers of non-compliances and scheduled-but-not-completed procedures,[4] and (2) contamination of hog carcasses with *Salmonella.* The correlations were used to predict the potential effect that devoting more resources to those offline procedures might have on human illness attributable to the consumption of pork products. Stochastic simulations were used to account for statistical uncertainty in the estimates relating inspection procedures in an establishment to detection of *Salmonella* in samples from hog carcasses.[5] Illness estimates were based on data from the Centers for Disease Control and Prevention (CDC), and uncertainty distributions were used to account for the variability in annual *Salmonella* illnesses and statistical uncertainty about the relationship between the pathogen prevalence levels at the establishments and the corresponding annual number of illnesses that could be attributed to the pathogens.

As with any risk assessment, FSIS's risk assessment relies on a number of assumptions. FSIS assumed that the differences between the approach to slaughtering hogs and slaughtering poultry would not alter the relationship between the presence of *Salmonella* contamination on carcasses and the likelihood of contamination of meat and human illness. Furthermore, hog slaughter establishment specialization has been facilitated by vertical integration within the industry, much like the poultry industry.[6] FSIS also assumed, for the purpose of this risk assessment, that the relationship between *Salmonella* contamination of hog carcasses and downstream products such as pork parts (*e.g.,* pork chops) and ground pork closely mirrors that of the established relationship between *Salmonella* contamination of poultry (*e.g.,* chicken) carcasses and downstream products such as chicken parts and ground chicken. On the other hand, the likelihood of positive Salmonella findings on hog carcasses is significantly lower than on chickens. While FSIS did not conduct any specific analyses to examine this assumption, the Agency has conducted numerous peer-reviewed analyses of the relationship between Salmonella contamination frequency on chicken

[1] The Hog HIMP Report is available on the FSIS website at: *http://www.fsis.usda.gov/wps/wcm/connect/f7be3e74-552f-4239-ac4c-59a024fd0ec2/Evaluation-HIMP-Market-Hogs.pdf?MOD=AJPERES.*

[2] As FSIS explained in the proposed rule, the Agency used a similar approach to estimate the public health benefits associated with the final rule titled *Modernization of Poultry Slaughter Inspection* (79 FR 49565).

[3] FSIS baseline data is available at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/microbiology/baseline/baseline.*

[4] Scheduled procedures are assigned to inspectors at an establishment by the Public Health Information System (PHIS). Before FSIS implemented the PHIS, scheduled procedures were assigned by the Performance-Based Inspection System (PBIS). Unscheduled procedures are performed according to inspector needs at an establishment and may include verification checks for fecal material, ingesta, and milk, or they may be a response to unforeseen hazards or unsanitary conditions arising from sanitation SOP failures, or the need to verify corrective actions taken under the establishment's HACCP plan.

[5] For the risk assessment, FSIS used data from The Nationwide Microbiological Baseline Data Collection Program: Market Hogs Survey August 2010–2011 available at *http://www.fsis.usda.gov/wps/wcm/connect/d5c7c1d6-09b5-4dcc-93ae-f3e67ff045bb/Baseline_Data_Market_Hogs_2010-2011.pdf?MOD=AJPERES*).

[6] Muth, M. (2007). Pork Slaughter and Processing Sector Facility-Level Model. *https://www.rti.org/sites/default/files/resources/muth_pork-slaughter_final.pdf.*

carcasses and chicken parts.[7] These analyses indicate that the prevalence of *Salmonella* contamination on downstream products (*e.g.,* parts) often exceeds the frequency of measurement of *Salmonella* contamination in upstream products (*e.g.,* carcasses), and the Agency expects this relationship would apply to other amenable species slaughtered in FSIS establishments. The assumption of higher prevalence is logical given that samples of downstream products contain primals from multiple carcasses, increasing the likelihood of a single sample being contaminated.

The regression analysis of the historical data included in the market hog risk assessment showed a statistically significant correlation between (1) increased scheduled and unscheduled offline procedures and decreased scheduled but not performed procedures and (2) reduction in the prevalence of *Salmonella* positive samples from carcasses. Based on these results, the redeployment of Agency resources to scheduled and unscheduled offline activities, along with a reduction in scheduled but not performed procedures, is likely to contribute to food safety resulting from a lower prevalence of carcasses contaminated with *Salmonella,* which in turn the Agency expects to lead to fewer human illnesses. FSIS will evaluate policy effectiveness by routinely analyzing inspection task data in PHIS (*e.g.,* NRs for regulations on the PHR list, including NRs for HACCP, sanitation SOP, and Livestock Zero Tolerance tasks).

In April 2018, the Agency conducted an external peer review of the risk assessment. On August 6, 2018, FSIS posted a revised version of the risk assessment on its website at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/proposed-rules.* The revised risk assessment addressed reviewers' comments that FSIS should have used different modeling approaches. The revised risk assessment also included an in-depth power analysis, multicollinearity diagnostics, model parameters and estimates when more complex crossover and mixed-effects modeling approaches were applied, and a summary of all alternative models (Appendix H). The revisions made in response to the reviewers' comments did not produce changes to the risk assessment's conclusions that would require modifications of the proposed rule. However, the Agency gave interested persons 30 days (until September 5, 2018) to comment on the changes made to the risk assessment. To be transparent, FSIS has decided to add text to the risk assessment to better characterize the two different models that were conducted (see Tables 13 and 14 in the risk assessment and accompanying text). Specifically, FSIS has added additional language to the risk assessment—both in the summary and in the discussion—to highlight the results of the modeling without simulated data. To that end, the results of the modeling with simulated data—which, as would be expected, had less uncertainty around the estimated change in illnesses—are not used in support of this rule. The modeling without simulated data is now carried through in the Regulatory Impact Analysis. The result of those additions is that the uncertainty around estimated illnesses avoided is greater; however, the most likely estimated illnesses avoided are not affected. Notably, FSIS received a comment questioning FSIS's use of simulated data. FSIS believes that this change addresses the commenter's questions.

Additionally, minor edits and corrections for clarity and consistency were made in the main body of the risk assessment report. The most likely estimates of illnesses avoided from converting from traditional inspection to the NSIS did not change with incorporation of these additional analyses and other minor changes to the risk assessment.

The final risk assessment is available on FSIS's website at *https://www.fsis.usda.gov/wps/portal/fsis/topics/science/risk-assessments.* FSIS is responding to comments received regarding the risk assessment in Part C of section II. ''Comments and Responses'' below.

## II. Comments and Responses

FSIS received over 83,000 comments in response to the February 2018 proposed rule and five comments on the revised risk assessment. Most of these comments were form letters submitted as part of various write-in campaigns initiated by consumer advocacy organizations, animal welfare organizations, labor unions, and worker advocacy organizations. FSIS also received individual comments from private citizens.

In addition to the form letters and individual comments, the Agency also received comments from trade associations representing the meat industry, companies that conduct swine slaughter operations, consumer advocacy organizations, public health organizations, animal welfare organizations, labor unions, worker advocacy organizations, foreign countries, FSIS inspectors, an environmental organization, and a State Department of Agriculture. Below is a summary of the comments and FSIS's responses.

### *A. Requests for Public Meetings, Comment Extensions, and Documents*

*Comments:* Several consumer advocacy organizations, labor unions, and worker advocacy organizations stated that FSIS should have held public meetings to discuss the proposed rule. According to the comments, public meetings focused on the proposed rule may have helped to clarify the pros and cons of important proposed changes. A few consumer advocacy organizations argued that FSIS should have submitted the risk assessment for peer review before publishing the proposed rule, or, at least, extended the comment period for the proposed rule until all stakeholders had the opportunity to read and respond to the peer reviewed version of the risk assessment.

*Response:* Rather than hold a public meeting on the proposed rule, the Agency held two webinars in March and April 2018, to provide an overview of the proposed rule and provide the public with an opportunity to ask questions about the proposed rule. (Transcripts of the webinars are available on the FSIS website at *https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/past-meetings.*) During the webinars, FSIS provided the public with all the information that it would have provided during a public meeting.

The Agency explained during the webinars and monthly consumer and industry stakeholder meetings that it would reopen the comment period for the proposed rule if the Agency had to make significant changes to the risk assessment based on peer review comments. And, even though FSIS did not have to make significant changes to the risk assessment, the Agency reopened the comment period on the risk assessment for an additional 30 days to give stakeholders an opportunity to comment on the revised document.

In total, stakeholders had 90 days to review and comment on the proposed rule and 120 days to review and comment on the risk assessment. Executive Order (E.O.) 12866, as supplemented by E.O. 13563, states that agencies are to ''afford the public . . . with a comment period that should generally consist of not less than 60

[7] Ebel, E.D., Williams, M.S., Tameru, B. (2019) Relatedness of Salmonella contamination frequency on chicken carcasses and parts when processed in the same establishment. *Food Control* 100: 198–203.

days.'' The Agency believes that the public had ample time to consider the issues raised in the proposed rule and risk assessment to develop their comments.

*Comment:* A few worker advocacy groups argued that FSIS should have reopened the comment period on the proposed rule because, according to the commenters, the Agency relied on an unpublished data set of Occupational Safety and Health Administration (OSHA) logs to compare worker injury rates between HIMP and non-HIMP establishments.

*Response:* In the proposed rule, FSIS explained that the Agency compared injury rates between establishments operating under traditional inspection and HIMP (83 FR 4796). FSIS's analysis showed that HIMP establishments had lower mean injury rates than non-HIMP establishments. The analysis used injury rate data available on OSHA's website.

FSIS further explained that the survey captured data from OSHA logs of workplace injuries and illnesses, maintained by employers as mandated by regulations (*see* 29 CFR part 1904), and that 56 FSIS inspected market hog slaughter establishments submitted their injury rate data to OSHA (83 FR 4796). From these 56 establishments, FSIS explained that it excluded 27 low-volume establishments, leaving 29 establishments (5 HIMP and 24 Traditional). The low-volume establishments were excluded to provide a better comparison group of traditional establishments because all HIMP establishments are high-volume establishments. The results showed HIMP establishments had a lower mean number of injuries using three OSHA injury rate measures: Total Case Rate (TCR); Days Away, Restricted or Transferred (DART); and Days Away from Work (DAFW). However, FSIS noted that factors other than line speed may affect injury rates (*e.g.,* automation and number of sorters per line) and requested comments on worker safety issues in the proposed rule as a result.

All the information that FSIS used in its analysis is publicly available. FSIS does acknowledge that it did not provided the web address for OSHA's Establishment Specific Injury and Illness Data, which is available at *https://www.osha.gov/pls/odi/establishment_search.html.* However, it is easy to find on OSHA's website under the ''Data'' tab.

And, while FSIS did not post the exact data that the Agency pulled from its Public Health Information System (PHIS) to select swine slaughter establishments present in the OSHA data set, the same information can be found in other formats on FSIS's website. Establishment level production volume information is available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/data.* This data would allow interested parties to identify the high-volume establishments. Additionally, the list of establishments participating in HIMP is available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/HIMP-list-of-participating-plants.*

Although FSIS conducted an analysis of injury rates during the development of the proposed rule, FSIS did not use the analysis to draw conclusions on worker safety in HIMP or non-HIMP establishments or whether there is an associated impact on food safety. As discussed in more detail below, while FSIS recognizes that working conditions in swine slaughter establishments is an important issue, the Agency does not have the authority to regulate issues related to establishment worker safety. OSHA is the Federal agency with statutory and regulatory authority to promote workplace safety and health.

*Comment:* A few commenters argued that FSIS violated the Administrative Procedure Act (APA, 5 U.S.C. 551 *et seq.*) because the Agency did not identify the 21 non-HIMP establishments that it used to conduct its comparisons for the Hog HIMP Report or post all the raw data that it used to develop the Hog HIMP Report. According to the commenters, the APA requires reasoned decision-making based on an examination of relevant data articulated in a satisfactory explanation. The commenters argued that because FSIS did not provide all its raw data, the Agency failed to provide the public a meaningful opportunity to participate in the rulemaking process.

*Response:* The APA does not require Federal agencies to post all their raw data. That said, FSIS is committed to being transparent and responsive to stakeholders. FSIS clearly explained in the Hog HIMP Report that FSIS selected the 21 non-HIMP establishments because they were large, high-volume market hog slaughter establishments that had similar production volume, line speed, and days of slaughter operation to the five market hog slaughter HIMP establishments. FSIS also clearly explained in the Hog HIMP Report and the proposed rule (83 FR 4780, 4789) the Agency's analysis of its inspection data and its conclusions based on the data. Moreover, FSIS made every effort to respond to FOIA requests related to the proposed rule before the close of the comment period. The Agency has added all the information that it has recently released to its FOIA Electronic Reading Room.[8]

*B. HIMP*

*Comment:* Several consumer advocacy organizations, public health organizations, animal welfare organizations, worker advocacy organizations, and private citizens questioned whether data collected under the HIMP pilot study should be used to inform the NSIS. The commenters argued that the USDA's Office of the Inspector General (OIG) was critical of HIMP in its 2013 report.[9] The commenters stated that OIG found that FSIS: Did not adequately oversee the HIMP program because it did not evaluate whether the program resulted in a measurable improvement of the inspection process; allowed one HIMP establishment to forgo the standard FSIS policy to manually inspect viscera; and did not have formal agreements with the HIMP establishments.

According to the commenters, OIG's audit report also raised issues with the Agency's enforcement policies at all hog slaughter operations, finding that FSIS's policies did not deter establishments from becoming repeat violators of food safety regulations and that FSIS could not always ensure the humane handling of animals.

In September 2013, the U.S. Government Accountability Office (GAO) followed the OIG with a report entitled, *More Disclosure and Data Needed to Clarify Impact of Changes to Poultry and Hog Inspections.*[10] According to the commenters, GAO found that FSIS did not collect comparable data from establishments participating and not participating in the HIMP pilot study. The commenters also stated that GAO found that the use of volunteer facilities raised questions about self-selection bias and that information collected from the five market hog slaughter HIMP establishments would not provide reasonable assurance that any conclusions could apply more broadly to all swine slaughter establishments because of the small sample size.

*Response:* FSIS addressed OIG's concerns in the Agency's responses to the audit. In response to the OIG audit,

[8] FSIS's FOIA Electronic Reading Room is available at *http://www.fsis.usda.gov/readingroom.*

[9] OIG, 2013. Food Safety and Inspection Service, Inspection and Enforcement Activities at Swine Slaughter Plants, *https://www.usda.gov/oig/webdocs/24601-0001-41.pdf.*

[10] GAO, 2013. More Disclosure and Data Needed to Clarify Impact of Changes to Poultry and Hog Inspections, *http://www.gao.gov/assets/660/657144.pdf.*

FSIS updated its SIP letters (*i.e.,* formal agreements), requiring all HIMP establishments to conduct the same viscera inspection procedures, and implemented PHIS, enhancing the Agency's ability to better track trends in NRs.

In addition, the Agency implemented required supplemental training after the release of the updated Directive 6900.2, *Humane Handling and Slaughter of Livestock,* to improve inspectors' objective observation and assessment skills. The Situation Based Humane Handling training modules (Module I and Module II) effectively teach inspectors how to interpret an egregious or non-egregious inhumane handling event objectively, and to take appropriate enforcement actions. The training modules contain fictional scenarios of inhumane and egregious events and describe in detail how an inspector is to proceed with regulatory enforcement.

Furthermore, in October 2013, FSIS announced that it hired a Humane Handling Enforcement Coordinator, who conducts ongoing reviews of relevant NRs, suspensions and Notices of Intended Enforcement (NOIEs).[11] To accomplish this, the Humane Handling Enforcement Coordinator maintains a database to track the review of NRs and the review and tracking of suspensions and NOIEs pertaining to violations of the HMSA. The Humane Handling Enforcement Coordinator also conducts correlations with inspectors to help them improve their objective analysis when enforcing the HMSA and related regulations, which serves to reduce subjective interpretation of inhumane events and their regulatory outcome.

To deter repeat violators, the Agency changed the way that it schedules its in-depth reviews of establishments' food safety systems, known as food safety assessments (FSAs).[12] [13] In 2015, FSIS implemented its Public Health Risk Evaluation (PHRE) methodology, which consists of a decision-making evaluation that helps Enforcement, Investigations and Analysis Officers (EIAOs) and DOs determine if an FSA needs to be scheduled and conducted or if enforcement action is warranted for a particular establishment. The decision criteria used in the PHRE include factors such as pathogen testing results, recalls, outbreaks, regulatory findings, and inspection results at an establishment. The PHRE methodology and the decision criteria are described in detail in FSIS Directive 5100.4.[14]

Rather than schedule routine FSAs every four years, FSIS's Office of Planning, Analysis and Risk Management (OPARM) provides DOs with a prioritized list of establishments for PHREs once per month based on public health risk triggers (*e.g.,* if an establishment has produced adulterated product). EIAOs review historical data on the listed establishments and coordinate with inspection program personnel assigned to the listed establishments to determine if an FSA or other enforcement action is needed. DOs can still schedule for cause PHREs at establishments not on the prioritized list (*i.e.,* if there is an illness or outbreak, significant or repetitive contamination or adulteration incidents, or repetitive microbiological sampling failures). The use of the PHRE methodology allows FSIS to better target establishments for FSAs based on risk and to more effectively deploy its investigational resources (EIAOs).

In addition, FSIS developed PHIS alerts for inspection personnel that are triggered when an establishment receives a certain percentage of NRs for regulations on the Public Health Regulation (PHR) list.[15] The PHR list, which is updated annually and posted on the Agency's website, consists of regulations and specific provisions of regulations that historically have higher rates of noncompliance three months before a pathogen positive or enforcement action. Each month OPARM calculates a PHR NR rate for each meat and poultry establishment and determines if an establishment will be issued a PHR alert or if they should be considered by the DO for a PHRE, which may lead to an FSA. PHIS alerts have helped FSIS better identify trends that may warrant an FSIS enforcement action.

The GAO report identified what it believed to be data gaps in the HIMP pilot study and recommended that FSIS collect and analyze information to determine if the HIMP pilot study was meeting its purpose. FSIS agreed with the recommendation and began working on the Hog HIMP Report. GAO also identified strengths in the HIMP pilot study, including that of giving establishments responsibility and flexibility for ensuring food safety and quality and allowing FSIS inspectors to focus more on food safety related activities.

While it is true that the five market hog slaughter HIMP establishments represent a small sample size of establishments, they collectively represent diversity in geography, corporate structure, management styles, product distribution patterns, and other variables. FSIS believes that the volunteer market hog slaughter establishments participating in the HIMP pilot study, viewed collectively, are typical of the broader industry.

*Comment:* Some consumer advocacy groups questioned why the Agency did not use a third-party contractor to conduct its evaluation of the hog HIMP pilot study.

*Response:* FSIS did not hire a third-party contractor to draft the Hog HIMP Report because the model and the resulting inspection data had already been reviewed by third-party contractors. As FSIS explained in the proposed rule, the independent consulting firm, Research Triangle Institute (RTI), collected baseline organoleptic and microbiological data in the five market hog slaughter establishments that volunteered to participate in the HIMP pilot study before they implemented HIMP (83 FR 4780, 4788). These baseline data reflect the performance of these five establishments under traditional inspection before they implemented HIMP and provided the basis to establish HIMP performance standards for food safety defects and non-food safety ''Other Consumer Protection'' (OCP) defects.

FSIS also explained in the final rule to modernize poultry slaughter inspection (79 FR 49566, 49573) that in 2002, the Agency contracted with a third-party technical review team (review team, henceforth) selected by the National Alliance for Food Safety to review and evaluate the data collected from young chicken establishments operating under HIMP. The review team focused on the validity of the HIMP pilot study design and method to

[11] *https://www.fsis.usda.gov/wps/portal/fsis/newsroom/news-releases-statements-and-transcripts/news-release-archives-by-year/archive/2013/nr-102313-01.*

[12] See FSIS Directive 5100.1, *Enforcement, Investigations and Analysis Officer (EIAO) Food Safety Assessment (FS) Methodology* available at *https://www.fsis.usda.gov/wps/wcm/connect/31bb8000-fb33-4b51-964b-1db9dfb488dd/5100.1.pdf?MOD=AJPERES.*

[13] See FSIS Directive 5100.4, *Enforcement, Investigations and Analysis Officer (EIAO) Public Health Risk Evaluation (PHRE) Methodology* available at *https://www.fsis.usda.gov/wps/wcm/connect/6c30c8b0-ab6a-4a3c-bd87-fbce9bd71001/5100.4.pdf?MOD=AJPERES.*

[14] FSIS Directive 5100.4, Enforcement, Investigations and Analysis Officer (EIAO) Public Health Risk Evaluation (PHRE) Methodology available at *https://www.fsis.usda.gov/wps/wcm/connect/6c30c8b0-ab6a-4a3c-bd87-fbce9bd71001/5100.4.pdf?MOD=AJPERES.*

[15] *See* FSIS Notice 15–18, *Public Health Regulations and Alerts for use in Determining Inspection Program Personnel Actions and Public Health Risk Evaluation Scheduling in Meat and Poultry Establishments* available at *https://www.fsis.usda.gov/wps/wcm/connect/8f218f5b-197e-4813-bf92-be29be36ec08/15-18.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=8f218f5b-197e-4813-bf92-be29be36ec08.*

determine whether FSIS could use the organoleptic and microbial data collected under HIMP to compare the performance of establishments operating under HIMP to the performance of establishments operating under non-HIMP inspection systems. Overall, the review team found that the HIMP study design and method were valid and provided a useful and legitimate comparison of the performance of establishments operating under HIMP and non-HIMP inspection systems. The review team's findings are described in the report titled *Review of the HACCP-Based Inspection Models Project by the National Alliance for Food Safety Technical Team* (The Hargis Report).[16] While the review team did not review data collected from the market hog establishments operating under HIMP, the poultry and market hog HIMP models and the resulting inspection data are very similar. Therefore, FSIS determined there would be no benefit in hiring another review team to evaluate the HIMP market hog inspection data.

*Comment:* A few consumer advocacy organizations stated that the data used in the Hog HIMP Report is now stale as the Agency analyzed data from CY2006 through CY2010 and then CY2012 through CY2013.

*Response:* FSIS disagrees. FSIS has not made any significant changes to the HIMP model since 2013, and FSIS inspectors are still performing the same inspection tasks. The Hog HIMP Report findings from CY2006 through CY2010 and CY2012 through CY2013 were very similar. This shows that not much changed over a seven-year period, and that the model is stable. No significant changes in swine slaughter, FSIS inspection, or related regulations have occurred since CY 2013. Therefore, FSIS has no reason to believe that the data in the Hog HIMP Report is no longer useful simply because of the passage of time.

*Comment:* One consumer advocacy group noted that the Hog HIMP Report shows that there was an increase in total offline verification tasks in HIMP establishments during CY2012 and CY2013. However, according to the same commenter, tables 3–2 and 3–3 in the Hog HIMP Report show that inspectors performed fewer verification tasks in HIMP establishments than they did in non-HIMP establishments for more than half of the PHRs in CY2012 and CY2013. According to the commenter, the Agency treats a total pooled increase in inspection tasks across all regulations as outweighing the decreases in some inspection tasks. The commenter argued that FSIS needs to justify why a decrease in any inspection task for any regulation will not be detrimental to food safety. The commenter further argued that FSIS did not explain why the PHRs are relevant.

Another consumer advocacy group complained that the Hog HIMP Report did not indicate which inspection tasks were scheduled or unscheduled. The same commenter stated that FSIS did not demonstrate that the increased offline verification tasks in HIMP establishments were statistically significant, as opposed to a product of chance.

*Response:* The Agency uses PHIS to assign scheduled or ''routine'' inspection tasks. Inspectors in large, high-volume market hog slaughter establishments receive the same number of routine inspection tasks in both HIMP and traditional establishments. Unscheduled or ''directed'' inspection tasks are initiated by the inspector or their supervisor.

The Hog HIMP Report was not generated to evaluate the benefits of performing more scheduled versus unscheduled offline inspection verification tasks. The risk assessment discussed above evaluated, among other things, the effect of increased offline inspection verification tasks in swine slaughter establishments. The objective of the Hog HIMP Report was to determine whether the HIMP inspection system performs *as well as* the traditional inspection system in terms of product safety and wholesomeness, and overall consumer protection. As FSIS explained in the proposed rule (83 FR 4780, 4790), the Hog HIMP Report found that inspectors at HIMP market hog establishments are performing more off-line food safety related inspection verification tasks than inspectors at traditional market hog establishments, including an increased level of Sanitation SOP and HACCP inspection verification tasks. The Hog HIMP Report also found that HIMP market hog establishments have higher compliance rates with Sanitation SOP and HACCP regulations, lower levels of non-food safety defects, equivalent or better *Salmonella* verification testing positive rates, and lower levels of violative chemical residues, as compared to traditional non-HIMP market hog establishments.

FSIS disagrees that the Agency needed to indicate which offline inspection verification tasks were scheduled and unscheduled or demonstrate that the increased number of offline verification tasks in HIMP establishments were statistically significant and could therefore be used to evaluate whether HIMP market hog establishments performed as well as traditional market hog establishments. FSIS explained in the Hog HIMP Report that inspectors conducted more offline inspection tasks in HIMP establishments largely due to the increased inspection for visible fecal material, ingesta, and milk contamination under 9 CFR 310.18. FSIS inspectors at hog HIMP establishments inspect a sample of 24 carcasses when they perform a Zero Tolerance verification task specifically for 9 CFR 310.18, whereas FSIS inspectors at traditional market hog establishments inspect a sample of 11 carcasses. These Zero Tolerance verification tasks are required every shift.

Tables 3–2 and 3–3 in the Hog HIMP Report show the number of times that FSIS inspectors verified compliance with a regulation. These tables do not necessarily show the number of times a task was performed. FSIS inspectors verify whether establishments meet requirements in 9 CFR part 417 when they conduct HACCP tasks; whether establishments meet requirements in 9 CFR 416.1–6 when they conduct sanitation performance standards (SPS) tasks; and whether establishments meet requirements in 9 CFR 416.11–17 when they conduct Sanitation SOP tasks. And, while inspectors receive the same routine tasks, not every regulation in tables 3–2 and 3–3 needs to be verified in every establishment. For example, FSIS inspectors would only verify whether establishments meet requirements in 9 CFR 416.16(b) if the establishment maintains records on a computer. In addition, inspectors would only check 9 CFR 417.3(a)–(c) in PHIS if they were verifying whether establishments met corrective action requirements after a deviation. So, the fact that table 3–2 and 3–3 show that FSIS inspectors verified fewer 9 CFR part 417 regulations in HIMP establishments does not mean that FSIS performed fewer HACCP inspection verification tasks in CY2012 and CY2013. Rather, it could mean that inspectors found fewer deviations that required the subsequent verification of corrective actions. Therefore, tables 3–2 and 3–3 do not support the commenter's argument that FSIS conducted fewer tasks in HIMP establishments, which they claimed could be detrimental to food safety.

As FSIS explained in the proposed rule (83 FR 4789) and above, the PHR list is relevant because it consists of regulations that have higher rates of noncompliance three months before a pathogen positive or enforcement

[16] The Hargis Report is available at *https://www.fsis.usda.gov/OPPDE/nacmpi/Nov2002/Papers/NAFS97.pdf.*

action. The PHR list allows FSIS to focus on specific health related provisions of regulations that may be the most informative for prioritizing PHREs and FSAs. FSIS compared the number of verifications of PHR regulations in HIMP and traditional establishments because non-compliance with these regulations was determined by OPARM to be an important indicator of subsequent food safety issues and loss of process control.

*Comment:* One consumer advocacy group argued that the increased offline regulation verifications under HIMP are probably the result of greater reporting, rather than an actual increase in verifications. The commenter stated that they have received information that inspectors find that entering data into PHIS is cumbersome, so they do not enter data for unscheduled tasks unless they find problems. According to the commenter, there has been a significant drop in the number of verification tasks performed since the implementation of PHIS.

*Response:* FSIS inspectors in both HIMP and non-HIMP establishments use PHIS. FSIS provides instructions on how to use PHIS in its directives and notices. As FSIS explained above, an inspector at a large, high-volume slaughter establishment operating under HIMP would receive the same tasks as an inspector at a large, high-volume slaughter establishment operating under traditional inspection, except that the inspector in the HIMP establishment is instructed to schedule more carcass verification tasks. The documentation requirements for inspectors are also the same for HIMP and non-HIMP establishments. The key difference is that FSIS inspectors in HIMP establishments routinely document fewer condemned animals, carcasses, and parts because establishments conduct sorting procedures before FSIS inspection. Additionally, comments on inspectors not wanting to document completion of tasks in PHIS are outside the scope of these regulations.

*Comment:* A few consumer advocacy groups stated that they found 32 instances in which establishments were cited for violating 9 CFR 311.16(a)—Carcasses So Infected that Consumption of the Meat May Cause Food Poisoning. According to the commenters, these instances occurred in HIMP establishments rather than establishments operating under traditional inspection because establishment sorters on the slaughter line presented carcasses to FSIS that were unfit for processing. The commenters argued that the Hog HIMP Report should have compared NRs for 9 CFR 311.16(a) in HIMP and traditional establishments.

One consumer advocacy group noted that the Hog HIMP Report shows that there were statistically significant differences in the weighted, health-related Sanitation SOP and HACCP NRs for the five Hog HIMP establishments as compared to those establishments operating under traditional inspection for a combined four years. The commenter noted that while the Agency indicated in tables 3–9 and 3–10 that the total NRs for Sanitation SOP and HACCP PHRs were lower in CY2012 and CY2013 for the 5 HIMP establishments, these establishments had more NRs for non-compliance with other regulations. The commenter argued that for certain regulations like 9 CFR 417.3(a)(2), the five HIMP establishments had higher and statistically significant NRs compared to the 21 comparable non-HIMP traditional establishments. The commenter stated that the five HIMP establishments had an 11-fold and three-fold higher rate of violating 9 CFR 417.3(a)(2) in CY2012 and CY2013, respectively. The commenter noted that 9 CFR 417.3(a)(2) is a measure of whether an establishment is maintaining control over a critical control point. The commenter argued that because the five HIMP establishments received more NRs for this regulation, they were not adhering to their HACCP plans, and were out of control more frequently than the 21 comparable non-HIMP traditional establishments.

The same consumer advocacy group stated that they conducted their own analysis of NRs issued in the five HIMP establishments and five comparably-sized non-HIMP traditional establishments from CY2012 to CY2016. The commenter noted that, based on their own analysis, the five HIMP establishments had more NRs for non-compliance with 9 CFR 310.18, 416.3–416.5, 416.13, and 417.2. The commenter highlighted an NR that was issued to a HIMP establishment in 2017 because an establishment sorter did not identify a carcass with a food safety defect. The commenter also noted that OIG found that from FY 2008 to 2011, three of the 10 swine slaughter establishments cited with the most noncompliance records (NRs) were HIMP establishments. The commenter argued that these NRs demonstrate that the HIMP inspection system is not as effective as the traditional inspection system.

*Response:* FSIS disagrees that these NRs prove that HIMP establishments lose process control more often than traditional establishments. In Table 3–9 in the Hog HIMP Report,[17] PHR noncompliance rates in CY2012 at the five HIMP market hog establishments were statistically significantly higher for four regulations, statistically significantly lower for five regulations, and not statistically significantly different for eighteen regulations. Overall, the CY2012 PHR noncompliance rate for Sanitation SOP and HACCP regulations (9 CFR parts 416 and 417) in the five HIMP market hog establishments was statistically significantly lower than that for the 21 comparison non-HIMP market hog establishments. In Table 3–10 in the Hog HIMP Report, PHR noncompliance rates in CY2013 at HIMP market hog establishments were statistically significantly higher for three regulations, statistically significantly lower for five regulations, and not statistically significantly different for nineteen regulations. Overall, the PHR noncompliance rate in CY2013 for Sanitation SOP and HACCP regulations in the five HIMP market hog establishments was statistically significantly lower than that for the 21 comparison non-HIMP market hog establishments. The Sanitation SOP and HACCP regulations are among the regulations most strongly related to public health.

Under HIMP, if an establishment does not adequately sort for carcasses showing signs of septicemia or pyemia, FSIS issues an NR for 9 CFR 311.16(a). FSIS does not issue NRs for this regulation under traditional inspection because FSIS inspectors are responsible for identifying and removing food safety and non-food safety defects.

As is explained above, under HIMP, FSIS inspectors inspect a sample of 24 carcasses when they perform a Zero Tolerance verification task as opposed to inspecting a sample of 11 carcasses under traditional inspection. In addition, the Agency's offline inspectors in HIMP establishments perform more offline inspection activities that FSIS has concluded are more effective in ensuring food safety than offline FSIS inspectors perform in non-HIMP establishments operating under the traditional inspection system. Therefore, FSIS inspectors in HIMP establishments have more opportunities for detecting noncompliance with regulatory requirements that are directly related to public health than inspectors do in non-HIMP traditional establishments.

*Comment:* Several commenters argued that until FSIS can compare and

[17] *https://www.fsis.usda.gov/wps/wcm/connect/f7be3e74-552f-4239-ac4c-59a024fd0ec2/Evaluation-HIMP-Market-Hogs.pdf?MOD=AJPERES.*

evaluate HIMP and non-HIMP establishment performance using compatible data, the same data reporting period, and an equal number of establishments, and show a marked superiority of HIMP establishment performance, FSIS must not finalize the proposed rule.

*Response:* FSIS maintains that the data collected during the HIMP pilot study was valuable for evaluating whether the HIMP inspection system performs as well as the traditional inspection system. As stated above, FSIS did compare data from the same reporting periods and compared establishments with similar HACCP size and production volume. As stated in the Hargis report, ''[t]he review team noted some issues related to optimal design and interpretation, but finds that overall the data collected were both meaningful and useful and that the study was designed and conducted under real-world conditions and limitations.'' The review team also concluded that ''the overall design and methodology . . . were perhaps the best available options to allow for comparison of organoleptic data between the traditional and HIMP systems.'' FSIS disagrees that the Agency needs to show that the HIMP system is superior to the traditional inspection system before it can finalize the proposed rule.

*C. Risk Assessment*

*Comment:* The risk assessment used FSIS microbiological testing and inspection data from 2010–2011 and data from the HIMP pilot study. A few consumer advocacy organizations and public health organizations argued that the data has the following problems: (1) The data is generated through regulatory programs designed to verify process control within a given establishment at a specific point in time; (2) the data is at least seven years old and may not be representative of current industry practices, and (3) there were only five market hog slaughter establishments that volunteered and agreed to meet the additional requirements in the HIMP pilot study, resulting in a biased sample and results that are not generalizable to all non-HIMP market hog slaughter establishments.

*Response:* For purposes of the risk assessment, data from HIMP establishments were combined with data from traditional establishments to get a more complete picture of the possible combinations of establishment characteristics, inspection procedures, and *Salmonella* prevalence. The assessment produced estimates of *Salmonella* illnesses under scenarios where inspectors perform more offline food safety activities as compared to traditional inspection. As FSIS explained above, the data FSIS used in the Hog HIMP Report and risk assessment are still useful, despite the passage of time, because the HIMP inspection model has not changed since 2013 and FSIS is still conducting the same inspection procedures. FSIS also explained above that the Agency does not believe that the results are biased because there is evidence that the volunteer establishments participating in the HIMP pilot study are typical of the broader industry.

*Comment:* One public health organization stated that the model predicts that maximum reduction in the percentage of *Salmonella* positive samples and market hog-attributable salmonellosis cases occurs when the average numbers of offline inspection procedures performed (Scheduled and Performed (SP) and Unscheduled (U)) increase 25 percent and the numbers of Scheduled but Not Performed (SNP) and NR inspection procedures decrease 50 percent and 46.67 percent, respectively. The commenter also stated that FSIS concluded that all establishments under NSIS are expected to achieve greater process control in response to increases in FSIS offline inspection tasks in addition to industry-wide commercial and technological innovation that will likely occur over time. According to the commenter, these results assume that resources will be re-allocated within an establishment in such a way that the FSIS offline inspection resources increase by 25 percent and the number of scheduled but not performed FSIS tasks decreases by 50 percent. The commenter questioned if this is achievable given FSIS's current inspection resources. The commenter stated that if inspection resources are lost, through attrition or budget cuts, these assumptions may not be realistic.

*Response:* The predicted increase in offline inspection resources and decrease in scheduled but not performed activities are achievable with FSIS's current inspection resources. In fact, NSIS will allow FSIS to better use its inspection resources. FSIS discusses the impact of attrition and budget in more detail in section ''I. Potential Budgetary Impacts on the Agency.''

*Comment:* One consumer advocacy organization stated that the risk assessment shows that the five HIMP establishments had higher NRs (9.4-times more, when weighted by volume) than the non-HIMP traditional establishments. According to the commenter, the risk assessment also shows that NRs are the strongest and a statistically significant indicator of human illnesses related to consuming contaminated pork.

The same commenter stated that decreasing NRs in all market hog establishments would have the effect of reducing illnesses by 3,893, or 4.7 percent. The commenter argued that this reduction would be 1.5 times greater than the reduction FSIS expects will be possible (2,533) by increasing offline verification tasks under NSIS. According to this organization's analysis, FSIS would reduce more illnesses by decreasing NRs, compared to redeploying inspection resources under NSIS.

*Response:* As FSIS explained in the risk assessment, NRs were included in this assessment for theoretical evaluation only as a possible decision variable because of inclusion in the NPIS risk assessment. For this assessment, the variables associated with offline inspection tasks represent the sum of each type of category across the various inspection procedure codes in an establishment on each day that a *Salmonella* sample was collected. Unlike SP, SNP, and U, NRs depend on noncompliance by establishments and are strictly not an FSIS decision variable. Historic occurrences of establishment non-compliance may help explain variability in pathogen performance that already has been observed. However, because future NR rates depend on the behavior of establishments, it is not feasible to assume that the NR rates can be varied (like SP, SNP, and U) solely by reallocating Agency inspection resources. Therefore, FSIS considers implementation scenarios that simulate future changes in the NR variable infeasible, but the theoretical examination of NRs offers potential risk management insights.

*Comment:* A consumer advocacy organization asked, if conducting more offline procedures at HIMP establishments reduces *Salmonella* contamination, why didn't FSIS find a statistically significant reduction in *Salmonella* in HIMP establishments as compared to non-HIMP traditional establishments? The commenter noted that from CY2006 through CY2009 the *Salmonella* percent positive for market hogs was lower in HIMP establishments than in non-HIMP establishments, but it was higher in the HIMP establishments in CY2010. According to the commenter, data from a baseline *Salmonella* study from August 2010 through August 2011 found that the *Salmonella* percent positive for carcasses in the HIMP establishments was almost one-half the value of the rate in comparable non-HIMP

establishments—0.69 percent and 1.35 percent, respectively—but the difference was not statistically significant. According to the commenter, FSIS did not explain why the *Salmonella* percent positive for carcasses are sometimes higher in HIMP establishments and sometimes lower as compared to non-HIMP establishments.

*Response:* The risk assessment was not conducted as a comparison between HIMP and non-HIMP establishments operating under traditional inspection. It was a regression analysis that looked at the numbers of FSIS inspection procedures conducted and *Salmonella* prevalence at all swine slaughter establishments together. The risk assessment did show a statistically significant relationship between increased offline inspection procedures and reduced *Salmonella* contamination for carcasses. In contrast, the Hog HIMP Report compared the average *Salmonella* percent positive between the five HIMP establishments and twenty-one non-HIMP comparison establishments. The latter analysis did not detect statistically significant differences between these two establishment groups across years, and this is likely attributable to the small sample size (number of HIMP and non-HIMP establishments) relative to the low number of *Salmonella* percent positives at the post-chill carcass sampling point.

*Comment:* A few consumer advocacy organizations and public health organizations noted that the risk assessment that informed the modernization of poultry slaughter inspection final rule also predicted that conducting more offline tasks would likely result in food safety benefits. According to the commenters, microbial sampling conducted since NPIS's implementation has not supported this prediction. A few commenters noted that in a preliminary assessment of NPIS provided to stakeholders last fall, FSIS indicated that *Salmonella* and *Campylobacter* percent positives were similar between large establishments that volunteered to operate under NPIS and large establishments that decided not to change their inspection systems. One consumer advocacy organization argued that recent data reveal that NPIS establishments are more likely to fail FSIS *Salmonella* performance standards than establishments that have not converted to NPIS. The commenters argued that like NPIS, NSIS will not have food safety benefits.

*Response:* As noted by the commenters, in a preliminary assessment of NPIS, FSIS found that carcass *Salmonella* and *Campylobacter* percent positives for the group of establishments that had converted to NPIS were comparable to those for similar establishments that had not converted to NPIS.[18] This assessment included all establishments that had converted to NPIS at that point in time, including the former HIMP establishments. The assessment also found that the former HIMP establishments had lower carcass *Salmonella* percent positives than both non-NPIS establishments and non-HIMP NPIS establishments, suggesting that carcass *Salmonella* percent positives are lower in establishments with more experience operating under HIMP and NPIS inspection systems. The Agency will continue to track FSIS carcass *Salmonella* percent positives as more establishments convert to NPIS.

The October 2017 preliminary analysis mentioned by the commenters compared 39 large NPIS establishments, 23 of which were former HIMP establishments, to 126 large non-HIMP and non-NPIS establishments. Poultry establishments continue to convert to NPIS, allowing for a more meaningful comparison between NPIS and non-NPIS establishments. FSIS analyzed the data and found no statistically significant difference in the proportion of establishments that fail to meet carcass *Salmonella* performance standards between those operating under NPIS and those operating under the traditional inspection system. Considering uncertainty, the 95 percent confidence interval for the difference in proportions includes zero. This provides supporting empirical evidence independent of the risk assessment model that in practice the NPIS provides an equivalent level of food safety protection compared to traditional inspection. FSIS disagrees that the current data shows that there will be no food safety benefits related to NPIS, and therefore, there will be no food safety benefits related to NSIS. Especially since the October 2017 preliminary analysis found that FSIS inspectors are performing approximately four times more offline verification tasks for visible contamination in NPIS establishments than in non-NPIS establishments. FSIS will continue to evaluate the public health impact associated with NPIS as more establishments convert and experience is gained with operating under NPIS.

[18] Update on Preliminary Analysis of Modernization of Poultry Slaughter, October 2017 available at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/himp-study-plans-resources/poultry-slaughter-inspection.*

*Comment:* One consumer advocacy organization noted that FSIS's uncertainty analysis indicated that there is a 12.5 percent chance that there will be increased illnesses simply by increasing the number of scheduled-performed verification tasks. The commenter argued that FSIS should not finalize a rule that would not improve public health.

*Response:* The risk assessment analyzed data on specific types of inspection activities and the prevalence of *Salmonella* in market hog slaughter establishments. The results suggest that, because inspection personnel assigned to NSIS will conduct more of the type of inspection activities that were correlated with lower *Salmonella* prevalence, NSIS will potentially result in fewer human illnesses than would be expected if not implemented. Therefore, FSIS needs to publish and implement this rule to be able to shift resources and realize the predicted benefits. In addition to the estimated values, the analysis provides the statistical uncertainty of the estimated number of averted illnesses by reporting the upper and lower confidence bounds around the estimates to acknowledge that uncertainty always will exist in such models.

*Comment:* One public health organization stated that FSIS did not assess the public health impact of increasing establishments' line speeds in the proposed rule. The same commenter stated that FSIS should explore the public health impact of increasing line speeds before finalizing the proposed rule.

*Response:* While the relationship between line speed and *Salmonella* prevalence was not incorporated into the risk assessment model, FSIS did consider the impact of line speed on HIMP establishment performance in the Hog HIMP Report. The Hog HIMP Report estimated that in CY2013, line speeds at the 5 HIMP market hog establishments varied from 885 to 1,295 head per hour (hph), with an estimated average line speed of 1,099 hph. The 21 non-HIMP comparison establishments had estimated line speeds of 571 to 1,149 hph, with an estimated average line speed of 977 hph. The Hog HIMP Report found that even with slightly faster line speeds, HIMP market hog establishments had higher compliance with Sanitation SOP and HACCP regulations, lower levels of non-food safety defects, equivalent or better *Salmonella* verification testing positive rates than the 21 traditional non-HIMP comparison market hog establishments, and lower levels of violative chemical residues.

*Comment:* A few commenters urged the Agency to redo the risk analysis model using data from FSIS's *Salmonella* pork cuts and comminuted pork exploratory testing after that project has been finalized.

*Response:* Data from the Agency's pork cuts and comminuted pork exploratory testing project would not improve the risk assessment. While the pork parts data may prove useful for monitoring and evaluating process control during further processing, it will not be useful for measuring process control during slaughter operations. Processing establishments purchase primals from multiple slaughter establishments. Because establishments comingle primals during processing, they may become contaminated during processing. As a result, the *Salmonella* percent positives during processing would not be reflective of *Salmonella* percent positives or pathogen contamination at the end of slaughter operations.

*Comment:* One animal welfare group argued that the risk assessment and peer review were too narrow in scope. The commenter argued that the risk assessment should not have been limited to *Salmonella* risk but should have included every potential food safety and public health risk. The commenter was especially concerned about the risk of *Yersinia enterocolitica* and influenza.

*Response:* FSIS selected *Salmonella* because it is the most common cause of foodborne illness associated with pork products and interventions targeted at reducing *Salmonella* have been shown to be effective at reducing contamination by other enteric pathogens, such as *Yersinia enterocolitica.* FSIS did not include swine influenza in the Agency's risk assessment because swine influenza has not been shown to be transmissible to people through eating pork products.

*Comment:* One consumer advocacy organization commented that FSIS had not adequately considered the peer review comments and cited Reviewer E's comment about whether using simulated data is ''a statistically legitimate approach.''

*Response:* After additional internal review, FSIS has decided to add language to the risk assessment to highlight the results of the modeling without simulated data (*see* Table 13 in the risk assessment). FSIS is confident that it has addressed reviewers' comments on the risk assessment.

*D. NSIS*

*Comment:* Comments from swine slaughter establishments, trade associations representing the pork industry, and a few private citizens supported the proposed rule. These comments stated that NSIS will enhance FSIS inspection procedures and increase industry efficiency while ensuring safeguards are in place to promote worker safety and animal welfare.

However, comments from consumer advocacy organizations, labor unions, public health organizations, animal welfare advocacy organizations, worker rights advocacy organizations, and private citizens objected to NSIS for various reasons. Many of these commenters objected to NSIS because they view NSIS as a system that ''privatizes'' inspection by replacing FSIS inspectors with establishment employees.

*Response:* FSIS is not privatizing swine slaughter inspection. The new inspection system will not eliminate FSIS inspection. NSIS simply requires establishments to take additional steps *before* FSIS inspection to ensure that their products are safe and wholesome.

As FSIS explained in the proposed rule, most market hog establishments under traditional inspection already voluntarily conduct sorting activities before FSIS ante-mortem inspection (83 FR 4780, 4783). Under NSIS, because establishment employees are responsible for identifying and removing market hogs that are not fit for slaughter before FSIS ante-mortem inspection, FSIS inspectors are presented with healthier animals that are more likely to pass inspection. Under NSIS, FSIS will continue to conduct ante-mortem inspection. The key difference is that establishment sorting activities will be mandatory.

Under traditional inspection, establishments conduct no post-mortem carcass sorting to identify which carcasses and parts appear eligible to bear the mark of inspection, which carcasses and parts contain removable defects correctable through trimming, and which carcasses and parts should be submitted to FSIS for condemnation because of generalized diseases or conditions. Rather, under traditional inspection, establishments are required to assign competent assistants to take such actions as directed by FSIS online inspectors after the inspectors have conducted the initial inspection activities (see 9 CFR 307.2(g)). Therefore, under traditional inspection, establishments rely on FSIS online inspectors to effectively control and direct their processing.

Under NSIS, FSIS inspectors will still be stationed on the evisceration line and these inspectors will continue to inspect every head, viscera, and carcass as required by the FMIA. FSIS offline inspectors will also continue to conduct food safety related inspection activities and evaluate establishment process controls. However, FSIS will require establishments operating under NSIS to take a more proactive role in removing contamination and identifying defects before FSIS post-mortem inspection.

*Comment:* A few consumer advocacy groups argued that the proposed rule's ante-mortem condemnation provisions violate the FMIA. One consumer advocacy group stated that 21 U.S.C. 603 and 9 CFR 301.9(a) require FSIS inspectors to examine and inspect each animal before it can be slaughtered for human food. The consumer advocacy group argued that FSIS completely disregards this requirement by allowing establishment employees to ''bypass'' antemortem inspection for 90 to 95 percent of all moving animals not deemed suspect by the establishment.

Several commenters noted that a former chief veterinarian for FSIS spoke out against the ante-mortem portion of the proposal, suggesting that it would increase the risk that FSIS veterinarians could miss the early signs of a large-scale animal disease outbreak. The commenters stated that an outbreak could impact food safety while having devastating economic consequences for U.S. animal producers. According to the commenters, a large outbreak of Foot and Mouth Disease (FMD) has the potential to shut off all foreign markets to U.S. beef and pork, costing American producers an estimated $128 billion over a 10-year period.

Two foreign countries requested clarification on the role of the FSIS Public Health Veterinarian (PHV) and inspectors in the context of ante-mortem activities under the NSIS. The commenters questioned if FSIS inspectors or veterinarians will inspect all animals or carcasses removed by the establishment sorters.

*Response:* As FSIS explained in the proposed rule, animal sorting procedures under HIMP and NSIS are virtually the same as animal segregation procedures used voluntarily by most market hog establishments under traditional inspection. FSIS has allowed establishments operating under traditional inspection to voluntarily implement animal segregation procedures since at least the 1980s without adverse economic consequences.

Most establishments under traditional inspection that slaughter only market hogs voluntarily segregate animals that show signs of diseases or conditions from healthy animals before the Agency

performs ante-mortem inspection.[19] Therefore, market hog establishment personnel segregate animals that appear to be normal and healthy from abnormal or unhealthy animals that appear to have condemnable diseases or conditions (*e.g.,* animals exhibiting signs of neurologic conditions, pyrexia, or severe lameness) into ''subject'' pens, where they undergo additional FSIS inspection. FSIS requires these establishments to document their segregation procedures in their HACCP plans or prerequisite programs.[20] FSIS inspectors examine all animals found by the establishment to be normal at rest, and five to ten percent of those animals in motion.[21]

FSIS disagrees that this inspection scheme violates the FMIA. FSIS inspectors still conduct 100 percent ante-mortem inspection.[22] If any animals exhibit signs of condemnable conditions, FSIS inspectors direct establishment employees to move the animals to the ''U.S. Suspect'' pens for final disposition by the FSIS PHV. The FSIS PHV examines all animals in the ''subject'' and ''U.S. Suspect'' pens. FSIS inspectors observe establishment employees performing animal segregation procedures at least once per month.

As mentioned above, the key difference, as compared to traditional inspection, is that sorting procedures are mandatory under NSIS. All establishments operating under the NSIS must address, as part of their HACCP system, procedures for sorting animals showing signs of diseases or abnormalities from healthy animals. These procedures must cover establishment sorting activities for dead and moribund swine and swine suspected of having central nervous system (CNS) conditions or pyrexia. Establishments under NSIS that do not adequately sort for these food safety defects before FSIS ante-mortem inspection will receive an NR for noncompliance with 9 CFR 309.19.

Regarding the questions from the foreign countries, FSIS inspectors inspect every market hog offered for slaughter. However, an establishment may decide to divert hogs that do not meet its market specifications to another slaughter facility, where they will receive 100 percent ante-mortem inspection by an FSIS inspector. This is not a change in policy. Establishments operating under traditional inspection may also divert hogs to other establishments operating under traditional inspection. If establishments decide to divert hogs, they are required to follow the Animal and Plant Health Inspection Service's (APHIS's) regulations governing the movement of live animals.

Under the NSIS, FSIS inspectors will observe establishment employees performing sorting procedures. During this time, FSIS inspectors will verify that animals that are intended to be disposed of are humanely euthanized and that animals that are intended to be diverted to another official establishment are eligible for transport.

*Comment:* Several comments asserted that revoking maximum line speeds conflicts with the purposes or provisions of the FMIA because faster line speeds will make it more difficult for FSIS inspectors to effectively conduct online inspection. A consumer advocacy organization stated that the FSIS inspectors must provide a ''critical appraisal'' of all carcasses (*AFGE* v. *Glickman,* 215 F.3d 7, 11 (D.C. Cir. 2000)). According to the comments, revoking maximum line speeds will make it extremely difficult, if not impossible, for FSIS to conduct a critical appraisal of each hog.

Comments from consumer advocacy organizations and an animal welfare organization further argued that FSIS does not have the statutory authority to conduct rulemaking to increase efficiencies for the government and industry.

*Response:* Based on FSIS's experiences under HIMP, online inspectors in HIMP establishments can conduct an effective online inspection of the head, viscera, and carcass of each hog when operating at faster line speeds. To ensure that online inspectors will be able to conduct effective online inspections, FSIS PHVs in all NSIS establishments are authorized to direct establishments to operate at reduced line speeds when, in the PHV's judgment, a carcass-by-carcass inspection cannot be performed within the time available due to the way that the hogs are presented to online inspectors, or because the establishment is not maintaining process control (9 CFR 310.26).

FSIS has the authority to change its regulations to conduct more efficient inspections and to reduce unnecessary regulatory burdens on industry. As FSIS explained in the proposed rule (83 FR 4780, 4782), 21 U.S.C. 621 provides that the Secretary shall make such rules and regulations as are necessary for the efficient execution of the provisions of the FMIA. In addition, this rulemaking is consistent with E.O. 13563, which directs Federal agencies to review existing rules that may be burdensome, unnecessary, and outdated and to modify, streamline, expand, or repeal them accordingly.

*Comment:* Several comments from consumer advocacy organizations, public health organizations, worker advocacy organizations, labor unions, and private citizens objected to FSIS's requirement that establishment employees sort carcasses and parts before they are presented for FSIS inspection because the commenters believe that establishment employees will miss many food safety and OCP defects. A few commenters referenced affidavits from three FSIS inspectors who worked in HIMP establishments who stated that because of excessive line speeds and lack of training, establishment sorters routinely miss many food safety and wholesomeness defects. The commenters argued that FSIS must more thoroughly evaluate the proposal to allow establishment employees to perform preliminary sorting before the Agency implements NSIS.

*Response:* The Hog HIMP Report found that the overall performance of HIMP establishments was as good as non-HIMP establishments. Results from offline inspections in HIMP establishments, which are conducted after establishment employees have completed the initial sorting of carcasses and parts, show that the rates of carcasses with food safety defects (*e.g.,* septicemia, toxemia, pyemia, and cysticercosis) and visible contamination from visible fecal material, ingesta, and milk in HIMP establishments were very low, well below the levels set by the HIMP performance standards. In addition, as explained in the proposed rule, OCP defect rates identified on carcasses and parts in HIMP establishments average about half the corresponding OCP HIMP performance standard. Therefore, the data from the HIMP pilot study show that establishment employees do effectively sort carcasses, trim defects, and identify

[19] *See* FSIS Directive 6100.1, *Ante-mortem Livestock Inspection* available at *http://www.fsis.usda.gov/wps/wcm/connect/2b2e7adc-961e-4b1d-b593-7dc5a0263504/6100.1.pdf?MOD=AJPERES.*

[20] See FSIS Directive 6100.1, Ante-mortem Livestock Inspection available at *http://www.fsis.usda.gov/wps/wcm/connect/2b2e7adc-961e-4b1d-b593-7dc5a0263504/6100.1.pdf?MOD=AJPERES.*

[21] See FSIS Directive 6100.1, Ante-mortem Livestock Inspection available at *http://www.fsis.usda.gov/wps/wcm/connect/2b2e7adc-961e-4b1d-b593-7dc5a0263504/6100.1.pdf?MOD=AJPERES.*

[22] *See* FSIS Directive 6100.1, *Ante-mortem Livestock Inspection* available at *http://www.fsis.usda.gov/wps/wcm/connect/2b2e7adc-961e-4b1d-b593-7dc5a0263504/6100.1.pdf?MOD=AJPERES.*

carcasses for disposal before FSIS post mortem inspection.

*Comment:* Several consumer advocacy groups and a public health organization recommended that FSIS establish training for establishment employees performing sorting activities and require sorters to prove proficiency in performing their duties.

Members of industry stated that establishments operating under HIMP have been successful at training employees to sort for food safety and non-food safety defects. These commenters commended the Agency for creating its sorter guide. The commenters stated that the sorter guide is comprehensive and consistent with current practices under HIMP. However, the commenters stated that the sorter guide could be improved by defining several pathological conditions and veterinary terms not well-known to industry personnel, as well as updating photos and diagrams.

*Response:* FSIS is not prescribing specific sorter training or certification. FSIS made some editorial changes to its sorter guide to simplify the guideline. The Agency did not make any significant changes to its sorter guide in response to comments. FSIS did not think it was necessary to add the pathological conditions, veterinary terms, or pictures mentioned in the comments because they are not commonly found or used. However, FSIS PHVs will be available to discuss conditions and terms if an establishment has any questions. The guide is available on the FSIS website at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatorycompliance/compliance-guides-index.* As FSIS explained in the proposed rule, the guide that the Agency has developed is based on the training that FSIS provides to its online inspection personnel that are responsible for sorting carcasses under the existing inspection systems.

*Comment:* Members of the pork industry and a trade association representing members of the pork industry requested that FSIS clarify when NRs will be issued by offline inspectors for carcasses contaminated with visible fecal material, ingesta and milk. The commenters noted that the proposed rule stated that FSIS will issue NRs for every carcass contaminated with fecal material, ingesta, and milk. According to the commenters, this policy is not consistent with FSIS Directive 6420.2, which instructs inspection personnel to issue NRs based on a specific sampling procedure during carcass verification checks.

*Response:* FSIS is clarifying that, consistent with FSIS Directive 6420.2, only offline inspectors will issue NRs for fecal material, ingesta, or milk contamination if they observe the contamination on sampled carcasses when performing the Livestock Zero Tolerance Verification task. FSIS online inspectors will not issue NRs if they observe fecal material, ingesta, or milk contamination on the carcasses. Rather, online inspectors will stop the slaughter line to allow for trimming of the carcass by establishment personnel and reinspection of the carcass by the inspector, unless the establishment has provided a rail-out loop. FSIS did not intend to change these inspection procedures with the implementation of this rule.

*Comment:* Members of the pork industry and trade associations representing the pork industry stated that the proposed requirement to immediately denature carcasses that have been sorted and removed from slaughter is overly burdensome and unnecessary. One trade association stated that imposing specific denaturing requirements may discourage establishments from adopting NSIS. That commenter suggested that FSIS amend the proposed 9 CFR 309.19(c) to read ''the establishment must dispose of the carcass according to 9 CFR part 314.'' A HIMP establishment recommended FSIS require that establishments maintain procedures to control and isolate carcasses and parts removed from slaughter and demonstrate that they do not enter the human food chain or immediately denature in accordance with 9 CFR part 314.

*Response:* FSIS has considered these comments and believes they have merit. Therefore, FSIS has revised its proposed disposal requirements and will instead require establishments to develop, implement, and maintain written procedures to ensure that animals and carcasses that have been sorted and removed for disposal do not enter the human food supply and are properly disposed of according to 9 CFR part 314.

*Comment:* Members of the pork industry and trade associations representing members of the pork industry noted that APHIS uses FSIS animal disposition data, collected and maintained through PHIS, to monitor animal disease rates and identify trends. These commenters all agreed that these data are useful and should not be lost in the transition to NSIS. According to these commenters, it would not be overly burdensome for establishments to keep records of the specific reasons why hogs are removed from slaughter because they already produce similar records. The commenters recommended that FSIS work with establishments on a procedure to transfer disposition information to APHIS on a regular schedule to ensure the ongoing utility of APHIS's swine health surveillance programs.

*Response:* In response to these comments, FSIS has amended its proposed record keeping regulations to require swine slaughter establishments to maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal. FSIS has created a form to collect disposition data from establishments. Establishments may provide the same information as requested on the form electronically if it is submitted in a format approved by FSIS; FSIS will provide further instructions on submitting this data electronically via PHIS later. FSIS will need establishments to submit their electronic data in a format that is compatible with PHIS so that the Agency can quickly analyze the data and share it with APHIS. FSIS has updated its Paperwork Reduction Act analysis to account for this new requirement.

*Comment:* Members of the pork industry, trade associations representing the pork industry, and a foreign country urged the Agency to allow establishments the discretion to incise lymph nodes when conducting carcass sorting activities based on their own hazard analysis. One member of the pork industry stated that they have demonstrated through testing and a supplier risk assessment that there is no value in incising lymph nodes to identify pathological conditions.

The foreign country noted that this approach aligns with the visual-only inspection methodology already implemented by other World Trade Organization (WTO) members. According to the foreign country, on-farm practices (husbandry, biosecurity, etc.) have evolved and improved to a point that disease transmission risks can be greatly reduced through effective on-farm controls. The foreign country stated that palpating and incising the mandibular lymph nodes has been shown to contribute to cross contamination of pork products by food safety hazards such as *Salmonella* and *Yersinia.* Therefore, the foreign country argued that moving to a routine visual-only inspection, supported by supply-chain information from primary production facilities, would improve food safety systems.

One trade association stated that the administrative hassle involved in collecting, organizing, and presenting

supply-chain information to FSIS to demonstrate that animal diseases like *M. avium* are not reasonably likely to occur would be unnecessarily arduous and not worth the benefits related to not incising lymph nodes.

*Response:* This final rule requires that establishment sorters incise mandibular lymph nodes and palpate viscera to detect the presence of animal diseases as part of their sorting activities, as was proposed (9 CFR 310.26(b)). However, establishments that operate under NSIS may seek waivers (9 CFR 303.1(h)) under the SIP to 9 CFR 310.26(b). Establishments would need to submit documentation supporting that the presence of animal diseases like *M. Avium* is not reasonably likely to occur. Should FSIS grant these waivers, establishments would be permitted to decide, on a lot-by-lot basis, whether to incise mandibular lymph nodes and palpate the viscera to detect the presence of animal diseases. The Agency has decided to grant waivers, when appropriate, to gather more information on the public health impact of such sorting activities to support potential future rulemaking.

*Comment:* A foreign country requested clarification on the requirement (9 CFR 310.26(a)) for establishments with fewer than three inspection stations to have a mirror at the carcass inspection station. The commenter questioned whether all NSIS establishments will have to have mirrors at the carcass inspection station. The foreign country was concerned that this requirement will be more burdensome than necessary, particularly for small establishments operating at slower line speeds.

*Response:* FSIS is requiring all NSIS establishments to provide a mirror so that FSIS can adequately inspect carcasses. Large, high-volume market hog slaughter establishments under traditional inspection are already required to provide mirrors to assist FSIS inspection (*see* 9 CFR 310.1(b)(3) and 307.2(m)(6)).

As FSIS explained in the proposed rule, the Agency does not expect very small establishments to convert to NSIS because of the costs of hiring and training establishment sorters.

*E. Line Speed*

*Comment:* Members of the pork industry and trade associations representing members of the pork industry supported FSIS's proposal to revoke maximum line speed limits for establishments operating under NSIS. Some of these commenters noted that line speeds were originally established to define the number of FSIS online inspectors required to inspect carcasses based on the number of carcasses an individual could reasonably evaluate in a given period. According to the commenters, when these limits were set, animal disease prevalence was much higher, so inspectors needed more time to complete inspection. The commenters agreed with FSIS's conclusions that innovations in animal housing, genetics, and processing have been implemented and have improved livestock conditions at slaughter; therefore, the current line speed limits are outdated and unnecessary.

Members of the pork industry and trade associations representing the pork industry also stated that revoking maximum line speeds will allow establishments to better adapt their line speeds to slaughter conditions. These commenters argued that line speeds can be adjusted to optimize efficiencies without jeopardizing worker safety, animal welfare, food safety, or quality. These commenters noted that the Hog HIMP Report found that HIMP establishments do not operate at line speeds that are significantly faster than the current maximum line speed for market hogs.

*Response:* This final rule revokes the maximum line speeds for establishments operating under NSIS. The maximum line speed under the existing regulations for market hogs is 1,106 head per hour (hph) with seven online inspectors. Experience from the HIMP pilot study shows that HIMP establishments operate with an estimated average line speed of 1,099 hph, and that the line speeds varied from 885 hph to 1,295 hph (under a waiver). Thus, although they are authorized to do so, market hog HIMP establishments do not operate at line speeds that are significantly faster than the current maximum line speeds for market hog establishments operating under traditional inspection.

NSIS is informed by the Agency's experiences under HIMP, and establishments operating under HIMP have demonstrated that they are capable of consistently producing safe, wholesome, and unadulterated pork products while operating at line speeds above the current maximum line speeds (for market hogs under traditional inspection). HIMP establishments also have consistently met pathogen reduction and other performance standards when operating without prescribed maximum line speeds. Moreover, NSIS incorporates additional measures that will apply to all swine slaughter establishments. These measures, which include carcass testing for microbial organisms at pre-evisceration and post-chill (or for hot-boned product, pre-evisceration and after the final wash), are designed to ensure that establishments maintain process control. As a result, FSIS has decided that line speed limits are not necessary for establishments operating under NSIS.

*Comments:* Members of the pork industry and trade associations representing the pork industry stated that increased line speeds will not present greater risks for worker safety. One company that owns a HIMP establishment commented that they have not found a correlation between line speeds and worker safety issues in their establishment. According to this commenter, their company's Total Recordable Incident Rate (an OSHA reporting category) has shown a significant decline in recordable injuries since they started operating under their line speed waiver. The commenter also stated that their findings were consistent with the proposed rule's comparative analysis of injuries, which found that HIMP establishments had lower mean injury rates than non-HIMP establishments.

Members of the pork industry and trade associations representing the pork industry stated that establishments continuously evaluate worker safety. According to the commenters, establishments actively work to reduce injuries by implementing ergonomic programs, modifying processes, and creating additional job positions to distribute manual tasks among workers.

However, comments from worker advocacy organizations, labor unions, consumer advocacy organizations, an environmental advocacy organization, and private citizens asserted that revoking maximum line speeds will increase risks to worker health and safety in establishments that operate under NSIS. The comments referenced studies, reports, and other data on work-related injuries in the meat processing industry. The most commonly referenced information sources included:

- Documents published by OSHA that state that musculoskeletal injuries and disorders are prevalent in the meatpacking industry. In the documents, OSHA recommends that establishments should reduce line speeds and production rates to decrease injury rates.
- 2016 BLS data showing that employer reported injury rates for meat establishment workers who were injured or made ill at work are 2.4 times the rate of workers in other private-sector industries.

• Reports published by the GAO that concluded, among other things, that injury rates in the meat slaughter industry continue to be higher than the rates for others in the manufacturing industry, that meat workers may under-report illnesses and injuries because they fear losing their jobs, and that employers may underreport worker injuries because of concerns about potential costs.

• Various reports from worker advocacy organizations on worker safety in meat processing establishments. These reports include statements from slaughter establishment workers that have suffered illnesses and injury from the fast-paced repetitive tasks associated with the current line speeds.

The comments stated that the available studies, reports, and data contradict FSIS's analysis of worker illness and injury in the proposed rule.

*Response:* While FSIS agrees that safe working conditions in swine slaughter establishments are important, the Agency has neither the authority nor the expertise to regulate issues related to establishment worker safety. FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture under the FMIA, the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA; 21 U.S.C 1301 *et seq.*) (the Acts). Under these Acts, FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and properly marked, labeled, and packaged. The Acts authorize FSIS to administer and enforce laws and regulations solely to protect the health and welfare of consumers.

The Department of Labor's OSHA was created by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) to assure safe and healthful working conditions for men and women by setting and enforcing standards and by providing training, outreach, education, and assistance. OSHA is the Federal agency with statutory and regulatory authority to promote workplace safety and health. FSIS's authority with respect to working conditions in slaughter establishments extends only to FSIS inspection personnel.

FSIS has worked with OSHA to develop a poster that establishments must display providing information on the signs and symptoms of occupational injuries and illnesses experienced by market hog slaughter workers, and about workers' rights to report these conditions without fear of retaliation (see 9 CFR 310.27). This final rule also requires establishments operating under NSIS to submit on an annual basis an attestation to the management member of the local FSIS circuit safety committee stating that the establishment maintains a program to monitor and document any work-related conditions of establishment workers (9 CFR 310.27). Because OSHA is the Federal agency with statutory and regulatory authority to promote workplace safety and health, FSIS will forward these annual attestations to OSHA for use in its own enforcement program. FSIS employees, however, will not be responsible for determining the merit of the content of the attestation or for enforcement of non-compliance with the attestation provision. OSHA and FSIS will continue to partner through a Memorandum of Understanding,[23] to strengthen collaboration between FSIS inspectors and OSHA enforcement staff and ensure identification and reporting of safety hazards impacting working conditions of FSIS inspectors and those of establishment employees.

*Comments:* Comments from animal welfare advocacy organizations and private citizens concerned about animal welfare asserted that revoking maximum line speeds for establishments that operate under NSIS will have adverse effects on the humane handling of swine. The comments expressed concern that faster line speeds would increase the potential for workers to force animals to move faster than normal walking speeds and for ineffective stunning. Most of these comments referenced an undercover video that was taken at a HIMP establishment in 2015. According to the commenters, the video showed hogs that were beaten and electrically prodded to move to keep up with the slaughter line speed. The commenters claimed that the video showed hogs that were conscious when they entered the scalding tank because they were improperly stunned.

Several animal welfare groups also claimed that establishment employees are pressured by establishment management to never slow the slaughter line. A few commenters stated that they found a Memorandum of Interview (MOI) issued in 2017 to a HIMP establishment that stated that an FSIS inspector observed that hog handlers were driving animals too fast and with more excitement than necessary, in violation of 9 CFR 313.2. According to the commenters, the MOI also stated that the inspector's concerns had been raised at least twice at weekly meetings with establishment management. The commenters argued that the MOI shows that hogs are routinely forced to move too fast in HIMP establishments.

One commenter supported FSIS's decision to add a second offline inspector to conduct additional offline activities such as monitoring compliance with the HMSA. However, the commenter opposed FSIS's decision to decrease the total number of FSIS in-plant personnel.

*Response:* FSIS disagrees that revoking line speeds will have a negative effect on animal welfare. As the Agency explained in the proposed rule, FSIS was able to conduct more offline humane handling verification tasks under HIMP as compared to traditional inspection. As is the case under HIMP, more inspection resources will be available to verify whether establishments meet humane handling requirements as an offline activity under NSIS.

Regarding the undercover video, multiple FSIS experts—including trained veterinarians and humane handling experts—reviewed the video and determined that there was unacceptable rough handling and inappropriate use of a rattle paddle to drive animals. FSIS took immediate regulatory action against the establishment and required it to respond with acceptable corrective actions to prevent a recurrence.

While a person in the video suggests that animals were conscious after stunning, FSIS found that the animals appeared properly stunned and insensible to pain, as required by Federal law. The video was reviewed by a professor of animal science, who reached the same conclusion.

FSIS reviewed the 2017 MOI that stated that an FSIS inspector observed that hog handlers were driving animals too fast and with more excitement than necessary. FSIS has instructed its inspection personnel to properly document noncompliance in NRs and not MOIs.

*Comment:* One animal welfare organization noted that they submitted a petition in 2014 requesting that the Agency require all swine slaughter establishments to immediately and humanely euthanize non-ambulatory disabled (NAD) pigs. According to the petition, prohibiting the slaughter of NAD pigs would improve inspection efficiency and compliance with the HMSA, as well as reduce *Salmonella* risks. The animal welfare organization argued that FSIS must respond to their petition before finalizing the proposed rule.

*Response:* After carefully considering the issues raised in the petition, along

[23] The MOU is available at: *https://www.osha.gov/laws-regs/mou/1994-02-04.*

with the referenced information and other letters received in support of the petition, FSIS has concluded that its existing regulations and inspection procedures are sufficient and effective in ensuring that NAD pigs are handled humanely at slaughter and in preventing diseased animals from entering the human food supply. Consequently, the Agency is denying the petition. The Agency's final petition response is available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions.* FSIS denied a similar petition in 2013 requesting that the Agency prohibit the slaughter of all NAD livestock. That petition response is also available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions.*

*F. Ready-to-Cook*

*Comment:* Members of the pork industry and trade associations representing members of the pork industry generally support the proposed RTC pork product standard. However, the commenters requested that FSIS amend the definition to include language such as ''reasonably free,'' or ''sufficiently free,'' to clarify that the RTC standard is a standard for non-food safety defects and not a zero-tolerance standard.

These same commenters recommended that the Agency allow establishments to apply the RTC standard at any appropriate location at or before the point of packaging or to clarify that the Agency intends this type of flexibility if that is the case. One trade association said that because an establishment may apply processes targeting RTC criteria and other quality issues at various locations after the cooler, FSIS should not inspect for RTC criteria before the cooler. The commenter argued that there is no food safety concern associated with carcasses and parts that may not yet meet the RTC standard entering the cooler.

Members of the pork industry, trade associations, and a foreign country asked FSIS to clarify when FSIS inspectors can slow or stop the evisceration line because of non-food safety defects in establishments operating under NSIS. These commenters also asked FSIS to clarify how the Agency will document noncompliance with RTC standards. According to the commenters, online inspectors should be instructed to stop the line only to remove food safety defects after the establishment's final control, and NRs should only be given after offline personnel assess and confirm a loss of process control.

A trade association noted that several processing defects covered in the RTC definition are listed under 9 CFR 310.18(a), which applies to all swine establishments and is typically enforced as a zero-tolerance standard. The commenter also noted that 310.18(a) is regularly categorized as a PHR. The commenter was concerned that if an NSIS establishment receives an NR for 9 CFR 310.18(a) for failure to meet RTC standards, it will unjustly influence the establishment's PHR rate. Rather than cite 9 CFR 310.18(a), the commenter suggested that inspectors should cite 9 CFR 310.26(d)(1) for products not meeting RTC standards at NSIS establishments to delineate NRs for non-food safety issues from NRs for food safety issues.

*Response:* Under NSIS, establishments will have the flexibility to design and implement measures to address OCP defects that are best suited to their operations. They will also be responsible for determining the type of records that will best document that they are meeting the RTC pork product definition. The records will be subject to review and evaluation by FSIS offline inspectors (9 CFR 310.26(d)(1)).

FSIS has decided to amend the definition of RTC pork product to clarify that it is not a zero-tolerance standard. RTC pork product will now be defined as ''any slaughtered pork product *sufficiently* free from bile, hair, scurf, dirt, hooves, toe nails, claws, bruises, edema, scabs, skin lesions, icterus, foreign material, and odor, which is suitable for cooking without need of further processing.''

FSIS also is clarifying that the RTC definition applies to pork products at the end of the slaughter process and before carcasses and parts enter the cooler. This is consistent with the Agency's requirements under HIMP and NPIS.

FSIS will issue instructions to its inspectors on how to verify the RTC pork product requirements using the routine and directed PHIS Swine RTC task. When conducting the routine task, FSIS offline inspectors will verify that an establishment maintains records as required by 9 CFR 310.26(d)(1). FSIS will issue an NR for 9 CFR 310.26(d)(1) if an establishment does not have records to document that the products resulting from its slaughter operation meet the definition of RTC pork product.

If FSIS online inspectors believe that the presentation of persistent unattended trim or processing defects indicates a lack of process control, they will notify the PHV. The PHV may then tell an offline inspector to conduct a directed PHIS Swine RTC task. FSIS offline inspectors will follow the same method and apply the same criteria that the establishment uses to check that they are meeting the RTC standard. FSIS will issue an NR for 9 CFR 310.26(d)(1) if the results exceed the criteria set by the establishment or if the establishment did not take the necessary corrective actions to restore process control when the evaluation criteria was exceeded.

If the PHV determines that the presentation of persistent unattended trim or processing defects indicates a loss of process control that affects the online inspectors' ability to adequately conduct a carcass-by-carcass inspection, the PHV will direct the establishment to reduce its line speeds. The PHV will then issue an NR citing 9 CFR 310.26(d)(1).

FSIS inspectors will use PHIS to link all NRs that are issued for the failure to meet the RTC pork product standard and associated documentation requirements. If establishment management is unwilling or unable to take the necessary steps to re-establish control of its process to meet RTC regulatory requirements, FSIS inspectors will discuss the issue with their supervisor and the DO. The DO will notify the establishment in writing that repeated NRs may lead the Agency to take a regulatory control action (9 CFR 500.2).

In the rare case that FSIS online inspectors identify a carcass so affected with non-food safety defects (*e.g.,* malignant lymphoma, icterus, or uremia) that the entire carcass must be condemned, they will stop the line for carcass condemnation unless the establishment provides a rail-out loop to rail carcasses offline for reexamination and condemnation.

*G. Implementation*

*Comment:* One member of the pork industry supported the NSIS implementation strategy suggested in the proposed rule. However, the pork producer requested more information on whether two shift operations must convert both shifts to NSIS at the same time. The same commenter also requested more information on what would happen if an establishment that converted to NSIS decided it wants to move back to traditional inspection.

A trade association noted that FSIS's implementation plan for NPIS was phased in with close coordination with DOs and establishments. The commenter stated that FSIS should follow a similar implementation plan for NSIS, with an initial notification period for establishments that want to adopt NSIS and an algorithm to

determine transition order. This commenter also suggested a phased-in approach for the mandatory provisions for all swine establishments based on establishment size.

The same trade association stated that establishments should submit for approval unique transition plans to the DO when providing notification that they intend to adopt NSIS. The trade association suggested that FSIS identify and provide acceptable examples of transition plan elements. According to the commenter, pre-approved elements should include transitioning single inspection stations in succession, one shift at a time, one inspection focus area (*i.e.,* head inspection) at a time, RTC monitoring before transitioning inspection activities, and others.

Consumer advocacy organizations stated that only establishments that have their HACCP plans approved by FSIS should be allowed to implement NSIS. The commenters suggested that FSIS should review every establishment's HACCP plans to determine if their tailored microbiological testing programs are valid before allowing them to convert to NSIS.

*Response:* All market hog establishments will initially have six months to notify their DO of their intent to operate under NSIS. Establishments that do not notify their DO of their intent to transition during this time will be deemed to have chosen to continue to operate under traditional inspection. Market hog establishments that decide that they would like to convert to NSIS after the initial notification date may notify their DO of their intent at any time after that date. The Agency will implement NSIS in the additional establishments that intend to convert on a schedule consistent with the availability of Agency resources and establishment readiness. The Agency intends to implement NSIS in all market hog establishments that choose to operate under this new inspection system, regardless of when the establishment notifies FSIS of its intent to transition to NSIS. However, the initial implementation wave will only include those establishments that submit their intent to convert to NSIS within the initial notification period.

Because there are fewer market hog establishments than poultry establishments, the Agency does not think it will be necessary to use an algorithm to determine transition order. FSIS also does not think it is necessary to require establishments to develop formal transition plans. Establishments will need to transition all shifts and inspection stations to NSIS at one time. However, FSIS DOs will work with establishments to ensure a smooth transition from traditional inspection to NSIS. And, if necessary, FSIS DOs will work with establishments to ensure a smooth transition from NSIS back to traditional inspection.

FSIS does not think it is necessary to review HACCP plans before establishments convert to NSIS. FSIS already has inspection tasks in place to verify that establishments are properly implementing their HACCP systems in accordance with 9 CFR part 417.

The Agency is establishing separate applicability dates for large, small, and very small establishments to comply with the regulations that prescribe procedures for controlling contamination throughout the slaughter and dressing process in 9 CFR 310.18(c), and the regulations that prescribe recordkeeping requirements in 9 CFR 310.18(d). The applicability dates will provide additional time for small and very small establishments to comply with these provisions.

*H. Environmental Assessment*

*Comments:* Comments from an animal welfare advocacy organization and an environmental advocacy organization stated that before FSIS can finalize the proposed rule, the Agency must prepare an Environmental Impact Statement (EIS), as required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) because, according to these commenters, allowing market hog slaughter establishments to increase line speeds will result in significant environmental impacts. The commenters stated that faster line speeds would mean more hogs slaughtered per shift. According to the commenters, more hogs slaughtered would mean more waste and more water use. The commenters asserted that these are all significant environmental impacts, with both individual and cumulative effects at the local, state, and national levels. The commenters also stated that FSIS cannot claim the categorical exclusion from the preparation of an Environmental Assessment (EA) or an EIS under 7 CFR part 1b of the USDA regulations.

*Response:* FSIS maintains that this rulemaking is categorically excluded from NEPA requirements. Federal agencies may identify classes of actions that normally do not require the preparation of either an EA or EIS because such actions do not have a significant effect on the human environment, either individually or cumulatively (40 CFR 1507.3(b)(2)). Such classes of actions are ''categorically excluded'' from NEPA requirements (40 CFR 1508.4). Under 7 CFR 1b.4, all FSIS actions, including inspection functions, are categorically excluded from preparation of an EA or EIS unless the Agency head determines that a particular action may have a significant environmental effect. Accordingly, FSIS is not required to prepare an EA or EIS unless it anticipates that this rule may have a significant environmental effect.

The Agency does not anticipate that its decision to revoke maximum line speeds for establishments that operate under NSIS will have individual or cumulative effects on the environment. As FSIS explained in the proposed rule, expected sales of pork products to consumers will determine the total number of hogs that an establishment slaughters, not the maximum line speed under which it operates. The Agency has no authority to determine an establishment's production levels. An establishment may decide to increase production hours to slaughter more hogs in response to market demand, regardless of its maximum line speed. Revoking maximum line speeds allow establishments to slaughter hogs more efficiently but will not directly affect consumer demand for the establishment's pork products. In some instances, an establishment operating under NSIS may be able to reduce its hours of operation while maintaining production at a rate necessary to meet market demand for its meat products. Thus, revoking line speeds is not expected to determine the number of hogs slaughtered or result in more waste or more water use, as suggested by the commenters.

In addition, all slaughter establishments, regardless of line speed, are required to meet all local, State, and Federal environmental requirements.

Sampling

*Comments:* Comments from consumer advocacy organizations and public health organizations supported FSIS's decision to require establishments to develop written procedures to prevent and mitigate microbial contamination of carcasses throughout the entire slaughter and dressing operations and incorporate the intervention strategies into their HACCP systems. These same commenters stated that sampling at pre-evisceration and post-chill will make it easier for establishments to see if their process control system is working. According to the commenters, microbial testing at the end of the process encourages industry to focus primarily on post-slaughter interventions, while the new approach encourages them to focus on prevention and mitigation of

microbial contamination throughout the slaughter process.

*Response:* FSIS agrees that requiring establishments to keep written records to document the implementation and monitoring of their process control procedures is a positive step forward for public health. This ongoing documentation will allow both the establishment and FSIS to identify specific points in the production process where a lack of process control may have resulted in product contamination or insanitary conditions. This will allow the establishment to take the necessary corrective actions to prevent further product contamination.

*Comments:* Comments from members of industry stated that FSIS should revise the proposed rule to remove sampling schemes based on establishment size. According to the commenters, basing sampling frequency on the size of the establishment is not supportable from a statistical sampling point of view. The commenters suggested that FSIS propose a minimum sampling frequency for all establishments based on the number of head slaughtered, over a certain time period.

*Response:* FSIS changed its proposed sampling frequency to remove the exception for very small establishments. Under this final rule, very small establishments will need to sample carcasses at pre-evisceration and post-chill (for hot-boned product, carcasses sampled at pre-evisceration and after the final wash) at a frequency of one per 1,000 carcasses. However, FSIS has decided to keep the exception for very low-volume establishments. This change makes the sampling requirements for swine slaughter establishments more consistent with the sampling requirements for poultry slaughter establishments. Additionally, if FSIS adopted a sample frequency of one per 1,000 carcasses for very low-volume establishments, many of these establishments would not have to sample at all.

*Comment:* Several consumer advocacy organizations and one public health organization objected to FSIS's proposal to allow establishments to develop their own sampling and testing protocols and to use alternate sampling locations and frequencies. These same commenters argued that it would be too difficult for FSIS inspectors to verify sampling plans that use alternate sampling locations and frequencies. Two consumer advocacy organizations argued that FSIS's *Salmonella* performance standards remain a core element of HACCP and should not be eliminated under the proposed rule. One consumer advocacy organization argued that FSIS must not move forward with proposed inspection changes without maintaining a pathogen-specific performance standard. The commenter argued that modernized, HACCP-based inspection cannot function adequately without such a performance standard. The commenter further stated that uniform microbial testing is necessary to evaluate the impact of FSIS's planned inspection changes, as the Agency will not be able to verify trends in pathogen rates caused by the inspection changes without an effective national testing program.

One consumer advocacy organization argued that FSIS should maintain the current generic *E. coli* testing standard. Although the commenter did not oppose substitution of another indicator organism for generic *E. coli,* they argued that FSIS must ensure that any newly permitted testing program is evidence-based and equal or superior to the prior generic *E. coli* standard for fecal contamination detection. The commenter recommended that FSIS require establishments who seek to use an alternative testing program to the generic *E. coli* standard to apply for a regulatory waiver, which would allow for pre-implementation Agency review.

*Response:* The purpose of the new sampling requirement is to ensure that establishments monitor and evaluate the effectiveness of their procedures to prevent contamination of carcasses by enteric pathogens, and visible fecal material, ingesta, and milk on an ongoing basis. It is not intended to generate data to compare establishment performance across the industry.

However, FSIS has determined that it may be too difficult for inspectors to review and verify sampling plans that use alternate sampling frequencies and locations. As a result, FSIS is withdrawing the proposal to allow establishments to use alternate sampling frequencies and locations. Establishments that still wish to use alternate sampling frequencies and locations may submit a SIP waiver request to FSIS for review.[24] As is noted above, FSIS will provide information about waiver criteria in a future **Federal Register** document.

As FSIS explained in the proposed rule, FSIS discontinued its *Salmonella* verification sampling program for market hogs (carcasses) in 2011 to make better use of its resources. Because verifying the codified performance standards for market hogs was not a good use of Agency resources, and the standards have not been used since 2011, FSIS is removing the carcass *Salmonella* performance standards for market hogs. With that said, FSIS is currently testing pork cuts and comminuted pork products for *Salmonella* and expects to decide in 2019 whether to develop new pathogen performance standards for these products or take other actions to address *Salmonella* in these products.[25] FSIS pathogen test results for pork products are posted quarterly on the FSIS website: *https://www.fsis.usda.gov/wps/wcm/connect/df529ce7-575a-43e7-9219-48be29c80fa5/Sampling-Project-Results-Data.xlsx?MOD=AJPERES.*

Establishments may continue to sample for generic *E. coli.* FSIS considers the requirements under the former regulations for generic *E. coli* to be a scientifically validated ''safe harbor'' for monitoring process control, specifically for fecal contamination. FSIS previously granted waivers under the SIP to the generic *E. coli* testing regulations for establishments that want to test for other indicator organisms. Establishments operating under these waivers have demonstrated that they are able to effectively maintain process control based on their SIP sampling data.

*Comments:* Several members of industry, trade associations, and a State Department of Agriculture objected to the proposed pre-operational environmental sampling requirements. One HIMP establishment stated that environmental sampling would be an expensive change with little value. The commenter argued that current HIMP establishments have not been required to conduct environmental sampling beyond those tests that may also meet the Sanitation SOP requirements, and these establishments have shown consistent or better performance controlling for *Salmonella.*

A few public health organizations stated that requiring facilities to monitor and assess food contact surfaces for enteric pathogens is a reasonable measure given that recent investigations of *Salmonella* foodborne illness outbreaks revealed food contact surfaces to be contaminated with the outbreak strain. The commenters stated that requiring pre-operational environmental sampling should help ensure that

[24] See FSIS Compliance Guideline Procedures for New Technology Notifications and Protocols available at *https://www.fsis.usda.gov/wps/wcm/connect/c64d8f3b-56aa-49c9-91f3-daf0caaba6bd/New-Technology-Protocols-042015.pdf?MOD=AJPERES.*

[25] See U.S. Govt. Accountability Office, GAO–18–272, Food Safety: USDA Should Take Further Action to Reduce Pathogens in Meat and Poultry Products (March 2018). *https://www.gao.gov/assets/700/690709.pdf.*

surfaces are sanitary and free of enteric pathogens.

*Response:* This final rule does not require swine slaughter establishments to develop, implement, and maintain in their HACCP systems written procedures to prevent contamination of the pre-operational environment by enteric pathogens. In response to concerns about the regulatory burden, FSIS has decided to withdraw this part of the proposal until it considers options and timing for gathering more data on enteric pathogen contamination in the pre-operational environment. FSIS agrees that current HIMP establishments have shown consistent performance controlling for *Salmonella.*

*Comments:* Several members of industry, industry trade associations, and private individuals objected to certain content in the sampling guide. These commenters argued that the language in the sampling guide is prescriptive in both tone and language and implies mandatory requirements. The commenters stated that the sampling guide includes unhelpful and problematic sampling methods, techniques, and analysis, as these depend on individual establishments' sampling programs. For example, several commenters argued that, absent codified standards, Table 4 in the sampling guide would be a de facto performance standard, contrary to the objectives in the proposed rule. The commenters stated that the sampling guide should be revised to promote sampling programs tailored to each establishment. One industry commenter further argued that the word ''compliance'' should be removed from the document title to be consistent with recent changes to other FSIS guidance documents and because the document provides best practice recommendations and not regulatory requirements.

*Response:* FSIS guidance documents are intended to provide best practices and, in some cases, safe harbors based on the most current science available to Agency stakeholders to help them comply with regulatory requirements, and when applicable, meet performance standards. The sampling guide explains that FSIS considers the requirements under the former regulations for generic *E. coli* to be a scientifically validated ''safe harbor'' for monitoring process control for very low-volume establishments. The sampling guide also includes recommendations to assist small and very small establishments to meet regulatory requirements, and recommendations to develop a custom approach that are not dependent on establishments' available resources. For example, the sampling guide provides baseline information for those establishments that may need a starting place from which to calculate their own control limits. However, control limits change over time as establishment-specific data is collected and analyzed. FSIS has removed Table 4 and replaced it with a new table (Table 2) to provide better guidance for establishments that may want to use data from the 2010–2011 market hog baseline survey as an initial starting point from which to set their upper control limits. Therefore, the information provided in the document is not a performance standard.

In response to the comments, FSIS has revised the sampling guide to, in part, further clarify the purpose of the document, which is to assist small and very small establishments to comply with the new microbial organism sampling requirements that apply to all swine slaughter establishments under this final rule. The sampling guide has also been revised to include additional information on the intended use of provided methods, techniques, and analyses; and to remove the word ''compliance'' from the document title and clarify that the document does not constitute regulatory requirements. Additionally, the Agency moved the example control charts from the sampling guide from the sampling guide to Appendix 2 of the guideline and clarified how establishments can use control charts. The Agency did not recommend a specific control chart format. Finally, the Agency removed all references to pre-operational environmental sampling. The updated sampling guide is available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index.*

*Comments:* Several commenters objected to certain information provided in the sampling guide related to indicator organism sampling and testing. One industry commenter stated that both the proposed rule and the sampling guide, as written, could mandate a shift from analyzing market hog carcasses for enteric pathogens of concern, such as *Salmonella,* to monitoring a surrogate, such as Aerobic Plate Count (APC). The commenter argued that this process control approach is too singular, and FSIS should clarify in the sampling guide that establishments will maintain the flexibility to select for one or more indicator organisms. In addition, several commenters argued that FSIS should revise the sampling guide to remove sampling schemes based on establishment size. They stated that, from a statistical sampling viewpoint, establishing sampling frequency based on the size of the establishment is not supportable. These commenters also stated that generic *E. coli* testing should not remain a ''safe harbor,'' even for small and very small establishments, because no scientific correlation exists between microorganism presence/growth and facility size. Finally, one industry commenter noted that the sampling guide does not summarize all known control points for *Salmonella,* as the document claims it does.

*Response:* The sampling guide provides flexibility and monitoring options for establishments, and it makes clear that establishments may select one or more indicator organisms to monitor.

To address the comment about the singular process control approach, the sampling guide provides a link to the December 2013 FSIS guideline for controlling *Salmonella* in market hogs, which describes potential control points for *Salmonella* in the pre- and post-harvest production process. The potential control points described in that 2013 guideline may or may not be applicable to a specific establishment's process.

*Comments:* Several commenters expressed concerns with information provided in reference and example charts throughout the sampling guide. One member of the pork industry and one trade association representing the pork industry argued that establishments should not compare process control results to a nationwide geometric mean displayed in one chart. The commenters argued that market hog data is an inappropriate basis for developing upper control limits, as it is not applicable to all swine establishments. Further, they stated that these data from 2011 are outdated. One commenter stated that ''under NSIS'' should be removed from one table column heading, as the information would apply to all swine establishments.

*Response:* FSIS revised the sampling guide to remove the table that provided averages that represented the 80th percentile limits for each indicator organism included in FSIS's 2010–2011 market hog baseline survey. The Agency also removed the ''under NSIS'' language from the table that provides information for all swine establishments

In cases where an establishment does not have the resources or capacity to initially develop its own statistical control limits or analytical procedures, an establishment can utilize the aggregated data from the FSIS Nationwide Market Hog Microbiological Baseline Survey. The 2010–2011 baseline survey provides a wealth of microbiological data specific to swine

carcass sampling; these data are meant to provide a starting point for an establishment to develop its own control limit parameters over time. During the survey, FSIS collected two carcass samples at pre-evisceration and post chill.

*Comment:* One member of the pork industry and one trade association representing the pork industry recommended that FSIS remove from the sampling guide information related to finished product standard (FPS) waivers, as the subject is unrelated to the sampling guide.

*Response:* FSIS has removed the FPS waiver information from the sampling guideline.

*I. Economic Assessment*

*Comment:* One company that owns a HIMP establishment said that the cost of additional employees has been their most significant cost from the HIMP pilot study, and that they have had to hire and train up to 11 employees per shift to staff and maintain the inspection process.

*Response:* FSIS incorporated information from this comment into section III.G.1.a by revising the upper bound estimate from 10 employees to 11 in the description of additional establishment workers likely to be required by establishments that adopt the NSIS.

*Comment:* One industry commenter estimated that a full-time position, per slaughter shift, would be required to collect, record, and analyze data required to verify that an establishment's products meet the definition of RTC.

*Response:* While establishments are free to design their own process control monitoring systems, FSIS finds the estimated time and labor requirement provided in this comment to be inconsistent with FSIS's observations of HIMP establishments verifying OCP performance standards. FSIS explained in the proposed rule that pork carcasses that meet the HIMP OCP performance standards would meet the RTC pork product definition. Large swine establishments can verify OCP performance standards by taking 24 carcass samples per shift, requiring roughly one hour to collect, record, and analyze the data.

*Comments:* Several comments from members of the pork industry stated that they own establishments that operate under SIP waivers and conduct process control sampling at alternate frequencies.

*Response:* FSIS incorporated the information from these comments into section III.G.2.b of the final rule and used it to revise the cost estimate associated with changes to requirements for microbial organism process control sampling and analysis. This revision caused a slight decrease in potential industry savings. Under the SIP, 11 large swine establishments currently sample at an alternative frequency and the Agency assumes that these establishments will continue to do so when the applicability dates for this final rule arrive. As such, these establishments are not expected to change their process control sampling and will not experience a change in associated costs.

*Comment:* One member of the pork industry claimed that process control sampling requirements would increase cost.

*Response:* As is detailed in section III.G.2.b of the final rule, overall, the changes in process control sampling requirements were estimated to reduce industry wide sampling costs by about $0.57 million annualized over 10 years, applying a three percent discount rate.

*Comment:* One member of the pork industry reported that all six of their company's facilities have written sanitary dressing plans.

*Response:* FSIS incorporated information from this comment into section III.G.2.a of the final rule to reduce the cost estimate associated with developing, composing, training, monitoring, recording, and verifying written sanitary dressing plans to reflect that six establishments already have written sanitary dressing plans.

*Comment:* One company stated that many small and very small establishments are unlikely to adopt the NSIS due to the program's costs.

*Response:* FSIS agrees that many small and very small establishments are unlikely to adopt the NSIS. The Agency's cost benefit analysis assumes that very small establishments that exclusively slaughter market hogs do not have a high enough production volume to justify incurring the costs of converting to the NSIS.

*Comment:* One company participating in HIMP stated that it invested in capital expenditure projects to add or relocate inspection stations and reconfigure lines.

*Response:* The NSIS may require a minor capital improvement if the establishment does not already provide a mirror at the carcass inspection station. All the large high-volume establishments are already required to provide mirrors under existing regulations. Providing a mirror is a minor potential cost for a limited number of establishments.[26] If an establishment believes that additional capital expenditures will result in a benefit, they may voluntarily reconfigure or update their facilities to fully capture all the potential production efficiencies offered through participation in NSIS. Examples of such changes include line reconfiguration, which can cost between $10,000 and $250,000 and the creation of an inspection station, which can cost between $5,000 and $6,000. Establishments may reduce these costs by coordinating these facility updates with previously planned establishment renovations.

*Comment:* A few consumer advocacy organizations claimed that the Agency's cost benefit analysis understated training costs because the industry has a high turnover rate, necessitating that training take place more frequently than once per year.

*Response:* FSIS used BLS' industry turnover rate for non-durable manufactured goods to estimate annual training costs. Section III.G.1.a of the final rule provides additional details on how the cost benefit analysis estimates industry's training costs, which includes training new employees given the industry's turnover rate.

*Comments:* Several commenters stated that the Agency's guidance documents will likely need to be translated into additional languages. One commenter claimed that industry would be forced to hire translators to translate the Agency's guidance documents, the cost of which was not included in the cost benefit analysis.

*Response:* The Agency plans to make translated guidance documents publicly available as the need arises at no cost to industry. The cost of translating these documents is already within the Agency's budget. As such, the cost is not expected to increase the Agency's budgetary needs and is therefore not included in the rule's cost analysis.

## III. Executive Orders (E.O.s) 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts,

[26] The cost was estimated to be very small because all 22 large high-volume establishments and potentially several of the 13 small high-volume establishments are already required to provide mirrors. As such, any new expense would be negligible compared to the industry costs included in the cost-benefit analysis.

and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has been reviewed by the OMB under E.O. 12866.

*A. Updates to the Regulatory Impact Analysis (RIA)*

FSIS updated the proposed rule's RIA to reflect the changes made in the final rule in response to public comments. The changes to the costs and benefits sections incorporate the following factors:

- The Agency removed the mandatory pre-operational environmental sampling requirement.
- Establishments currently operating under SIP waivers conduct process control sampling at an alternative frequency and the Agency assumes that they will continue to do so when the applicability dates for this final rule arrive. Therefore, these establishments have been removed from the cost estimate associated with changes to requirements for microbial organism process control sampling and analysis.
- Additional information from the risk assessment that more transparently demonstrates the potential uncertainty, is now reflected in the cost-benefit analysis. However, the anticipated net benefit did not change.
- One company reported that all 6 of its establishments already have written sanitary dressing plans. As such, the annual cost estimate associated with developing, composing, training, monitoring, recording, and verifying written sanitary dressing plans has been revised down by approximately $87,000.
- The highest number of establishment employees to be hired to meet the needs of NSIS has been revised up to 11, based on an industry comment.
- The per head margin has been updated to rely on the North American Meat Institute's (NAMI's) 2017 Meat and Poultry Facts.[27]

*B. Need for the Rule*

The swine slaughter industry in the United States has evolved since Congress enacted the Wholesome Meat Act in 1967. Many of today's producers have invested in farm to table quality and food safety controls that effectively address health risks and consumer quality issues.[28] For these producers, the prescriptive nature of some FSIS regulations inhibits efficient production and the adoption of improved production methods and restricts their ability to adopt new technologies. Further, at large and high-volume establishments that exclusively slaughter market hogs, the current regulations that require FSIS to focus on non-food safety issues prevent FSIS from efficiently allocating resources, which inhibits food safety improvements and humane handling hazard prevention. Therefore, while traditional inspection is generally sufficient for low-volume establishments and for establishments that slaughter classes of swine other than market hogs, a modernized swine slaughter inspection system is needed, one that is less prescriptive, creates incentives for establishments to develop and invest in advancements in food safety and quality controls and procedures, and allows FSIS to improve inspection methods.

Baseline

*C. Overview of the Market*

U.S. pork production has increased at a moderate pace as seen in Table 2. Much of the additional growth in domestic production has been used to satisfy increasing export demands, which increased 43 percent between 2009 and 2018.[29] According to the Food and Agricultural Organization (FAO), pork is consistently ranked as the top meat in per-capita consumption worldwide[30] and is ranked third in the United States.[31]

TABLE 2—U.S. PORK SUPPLY AND DEMAND

[Carcass weight, million pounds]

| Year | U.S. production | Imports | Exports | Consumption | |
|---|---|---|---|---|---|
| | | | | Domestic | Per capita * |
| 2009 | 22,999 | 834 | 4,094 | 19,869 | 65 |
| 2010 | 22,437 | 859 | 4,223 | 19,077 | 62 |
| 2011 | 22,758 | 803 | 5,196 | 18,382 | 59 |
| 2012 | 23,253 | 802 | 5,379 | 18,607 | 59 |
| 2013 | 23,187 | 880 | 4,986 | 19,104 | 60 |
| 2014 | 22,843 | 1,011 | 5,092 | 18,836 | 59 |
| 2015 | 24,501 | 1,116 | 5,010 | 20,592 | 64 |
| 2016 | 24,941 | 1,091 | 5,239 | 20,892 | 65 |
| 2017 | 25,584 | 1,116 | 5,632 | 21,034 | 65 |
| 2018 | 26,315 | 1,042 | 5,870 | 21,497 | 66 |

* Measured in carcass weight, pounds.

Source: Livestock and Meat Domestic Data, All supply and disappearance, Historical, WASDE Pork-Full. USDA ERS Livestock and Meat Domestic Data. <*https://www.ers.usda.gov/data-products/livestock-meat-domestic-data/livestock-meat-domestic-data/#All%20meat%20statistics*> accessed on 6/12/2019. Last updated on 5/29/19.

In 2016, there were approximately 612 swine slaughter establishments under Federal inspection, Table 3.[32] Combined, these establishments process roughly 118 million hogs annually. FSIS divides swine into the following

[27] Nalivka, J.S., The 2017 Meat and Poultry Facts, NAMI August 2018.

[28] Key, Nigel and William McBride. 2007. The Changing Economics of U.S. Hog Production. USDA Economic Research Service (ERS.). Report No. 52.

[29] Livestock and Meat Domestic Data, All supply and disappearance, Historical, WASDE Pork-Full. USDA ERS Livestock and Meat Domestic Data. <*https://www.ers.usda.gov/data-products/livestock-meat-domestic-data/livestock-meat-domestic-data/#All%20meat%20statistics*> accessed on 6/12/2019. Last updated on 5/29/19.

[30] FAO Livestock commodities. <*http://www.fao.org/docrep/005/y4252e/y4252e05b.htm*> Accessed on 11/29/16.

[31] Livestock and Meat Domestic Data, All supply and disappearance, Historical. USDA ERS Livestock and Meat Domestic Data. <*https://www.ers.usda.gov/data-products/livestock-meat-domestic-data/livestock-meat-domestic-data/#All%20meat%20statistics*> accessed on 6/12/2019. Last updated on 5/29/19.

[32] USDA, FSIS, Public Health Information System (PHIS).

production categories for data collection purposes: Roaster swine, market hog, sow, and boar/stag. Today, the majority (97%) of the pork products available in the market are derived from market hogs.[33]

TABLE 3—NUMBER OF SWINE SLAUGHTER ESTABLISHMENTS BY SIZE, 2016

| HACCP processing size | Number of establishments | Total swine slaughter (head count) | Total market hog slaughter (head count) | Percent market hog |
|---|---|---|---|---|
| Large | 28 | 105,678,519 | 105,321,950 | 99.66 |
| Small | 105 | 11,862,341 | 8,497,891 | 71.64 |
| Very Small * | 479 | 903,009 | 625,863 | 69.31 |
| Total | 612 | 118,443,869 | 114,445,704 | 96.62 |

Source: Public Health Information System (PHIS).
* Two establishments classified as N/A were included in the category total for Very Small establishments.

As shown below in Table 4, many establishments now exclusively slaughter market hogs, a species sub class which, because of technological and animal management improvements, such as improved genetics, nutrition, and medical services, generally presents fewer food safety and quality issues.[34]

*D. Overview of the Final Rule's NSIS*

Several of the final rule's provisions apply to only those establishments that choose to participate in the optional NSIS. Meeting these provisions will likely increase an establishment's labor and training costs. Only market hog slaughter establishments are eligible to participate in the NSIS. Due to the economic constraints, FSIS expects that only large and small high-volume establishments that exclusively slaughter market hogs will choose to participate in the optional NSIS. In 2016,[35] there were 40 high-volume establishments that exclusively slaughtered market hogs: 27[36] large[37] (5 HIMP + 22 non-HIMP)[38] and 13 small establishments, Table 4. These establishments account for 93 percent of total swine slaughter annually, Table 4. Given their large share of the market and the ability to slaughter a sufficient number of market hogs to justify the likely costs associated with the NSIS, these 40 market hog establishments are expected to choose to implement the optional NSIS. Therefore, this analysis calculates the costs and benefits associated with the NSIS provisions for these 40 market hog establishments. However, because the 5 HIMP establishments already meet NSIS requirements, they are not expected to incur any additional new costs nor contribute to any increase in quantified benefits associated with adopting the NSIS.

TABLE 4—HEAD COUNT DISTRIBUTION ACROSS TYPES OF ESTABLISHMENTS, 2016

| Type of establishment | HACCP size | Number of establishments | Total swine slaughter (head count) | Percent of total head count |
|---|---|---|---|---|
| High-Volume Market Hog Only | Large—HIMP | 5 | 17,517,254 | 14.79 |
| | Large—Non-HIMP | 22 | 87,746,770 | 74.08 |
| | Small | 13 | 4,617,680 | 3.90 |
| Low-Volume Market Hog Only | Very Small | 71 | 32,360 | 0.03 |
| Mix of Species and Swine Sub Classes | Large/Small | 93 | 7,659,156 | 6.47 |
| | Very Small | 408 | 870,649 | 0.74 |
| Grand Totals | | 612 | 118,443,869 | |

* HACCP sizes were combined so as to not reveal proprietary information.
Source: PHIS.

*E. Overview of the Final Rule's Mandatory Components*

All swine slaughter establishments will need to comply with the two mandatory provisions of the final rule discussed below.

1. Written Sanitary Dressing Plans

FSIS is amending 9 CFR 310.18 to require swine slaughter establishments to develop, implement, and maintain as part of their HACCP systems, written procedures to ensure that no visible fecal material, ingesta, or milk is present by the point of FSIS post-mortem inspection of swine carcasses. This requirement will address a weakness of the current traditional inspection system, which is that verification checks performed at the end of the slaughter and chilling process encourage industry to focus its activities on post-process interventions to reduce contamination rather than prevention throughout the slaughter process. Prevention throughout the slaughter process is preferred because it promotes containing contamination close to its origin, which reduces cross contamination of multiple carcasses. The existing regulations require that establishments prevent swine carcasses contaminated with visible fecal material

[33] Source: PHIS.

[34] Key, Nigel and William McBride. 2007. The Changing Economics of U.S. Hog Production. USDA ERS. Report No. 52.

[35] Establishment level data from 2016 was used in both the Preliminary Regulatory Impact Analysis (RIA) and the Final RIA.

[36] In 2016 there was 1 large establishment that did not exclusively slaughter market hogs. As such, this analysis assumed they would not choose to participate in the optional NSIS and were excluded from the relevant sections in the analysis.

[37] HACCP size: Very Small Establishment = Less than 10 employees or less than $2.5 million in annual sales; Small Establishment = 10–499 employees; Large Establishment = 500 or more employees.

[38] In 2016, there was 1 large establishment that did not exclusively slaughter market hogs.

from entering the cooler. While preventing swine carcasses contaminated with visible fecal material from entering the cooler is an important safeguard for reducing the prevalence of pathogens on swine carcasses, this result generally cannot be effectively accomplished unless establishments implement appropriate measures to prevent contamination from occurring throughout the slaughter and dressing operation and implement process control procedures for preventive measures. Requiring establishments to keep daily written records to document the implementation and monitoring of their process control procedures is a positive step forward for public health. This ongoing documentation allows both the establishment and FSIS to identify specific points in the production process where a lack of process control may have resulted in product contamination or insanitary conditions. In addition, it will allow the establishment to implement corrective actions that could include the addition of preventive control measures to prevent recurrence of similar product contamination events or insanitary conditions.

Based on public comment, the final rule assumes all but six establishments will need to develop written sanitary dressing plans.

2. Process Control Sampling and Analysis for Microbial Organisms

Under this final rule, instead of following a prescribed microbiological testing program, each establishment will be responsible for developing and implementing its own microbiological sampling plan. Each establishment, except very low-volume establishments, is required to include carcass sampling at pre-evisceration and post-chill (*i.e.,* the point in the slaughter process after the carcass has chilled in the cooler and after all slaughter interventions are completed) or for hot-boned products, carcass sampling at pre-evisceration and after the final wash.

The microbiological standards prior to the final rule prescribed that all establishments monitor process control by sampling for generic *E. coli.* High-volume establishments were required to take one sample per 1,000 carcasses or request an alternative frequency. Very low-volume establishments were required to take 1 sample per week of operation up to 13 times a year. Several commenters from industry reported that each of their establishments operating under SIP conduct process control sampling at an alternative frequency. In addition, an industry survey found that many establishments elect to perform other microbiological tests in addition to testing for generic *E. coli.*[39]

*F. Overview of the Impact of the Final Rule on the Agency*

This analysis, in part, takes into consideration potential impacts to the Agency's budget. FSIS's budget is expected to be impacted by changes in staffing and training requirements for those establishments that choose to operate under the NSIS. Under traditional inspection, each slaughter line requires up to 11 full-time positions. Generally, these positions include both a supervisory and non-supervisory Public Health Veterinarian, (PHV) (OPM Veterinary Medical Science Series, 0701); a supervisory and non-supervisory consumer safety inspector, (CSI) (OPM Consumer Safety Inspection Series, 1862); and up to 7 Food Inspectors, (FI) (OPM Food Inspection Series, 1863). There are currently 418 full-time equivalent units (FTE) assigned to slaughter inspection at the 22 large non-HIMP (27 large—5 HIMP) and 13 small swine slaughter establishments expected to convert to the NSIS, Table 5. When these establishments convert to the NSIS, Agency personnel will require NSIS training. Additionally, the number of Agency personnel required to inspect the slaughter process will likely be reduced. See Agency Staffing section for details.

TABLE 5—CURRENT FSIS SLAUGHTER LINE POSITIONS AT NON-HIMP ESTABLISHMENTS THAT SLAUGHTER EXCLUSIVELY MARKET HOGS

| OPM job code | Number of positions |
|---|---|
| 1862 (CSI) | 120 |
| 1863 (FI) | 245 |
| 0701 (PHV) | 53 |
| Total | 418 |

Source: PHIS.

*G. Potential Costs of the Final Rule*

1. Costs Associated With the NSIS Components of the Rule

This analysis estimates the costs associated with the final rule's NSIS components. The 35 establishments that the Agency assumes will adopt the NSIS portion of the rule have similar characteristics to the 5 HIMP establishments, such as volume and sub species slaughtered. Given the successful participation of the 5 HIMP establishments in the pilot program and industry's continued interest in increasing the number of establishments participating in the HIMP pilot study, the potential benefits from adopting NSIS are expected to outweigh the potential costs. This analysis assumes that very small establishments that exclusively slaughter market hogs do not have a high enough production volume to justify incurring the costs of converting to the NSIS. While the 5 HIMP establishments are expected to adopt the NSIS, they have already implemented the changes associated with the NSIS by their participation in the HIMP pilot study and are not expected to incur any new or additional expenses. As such, they are not included in the group of establishments expected to incur an increase in costs associated with NSIS. The following analysis also excludes further consideration of the costs of submitting an attestation of work-related conditions due to its small estimated cost.[40] Costs examined generally fall under three categories: Labor, capital expenses, and developing written procedures.

In the following sections, this analysis presents the costs and benefits generated over a range of assumptions with respect to how much of the industry chooses to adopt the NSIS within five years. As was done with the NPIS, this analysis assumes a 5-year adoption period with roughly consistent annual adoption rates. These estimates are scaled for an illustrative calculation and assume that 35 of the 40 establishments that are likely to adopt the NSIS will incur additional costs associated with adoption. Using this illustrative calculation was supported by one public comment, which suggested that adoption timing and rate are difficult to estimate without a final rule. As is stated above, the 5 HIMP establishments are not expected to incur any additional costs associated with adopting the NSIS and are therefore excluded when calculating potential costs of the NSIS components of this final rule.

[39] Viator, C. et al. 2015. Meat Industry Survey in Support of Public Health Risk-Based Inspection. P5–42. Question 3.1.

[40] It was estimated that submitting such an attestation would require a Quality Control Technician with a labor compensation rate of $68.52 per hour, 2 minutes per year. Combined, submitting an annual attestation would cost all 27 large and 13 small establishments likely to adopt the NSIS approximately $91.36 annually (2 minutes * $68.52 per hour * 40).

TABLE 6—NSIS ADOPTION RATE

| Year | Total number of establishments adopted | | Percent adopted |
|---|---|---|---|
| | Large | Small | |
| 1 | 4 | 2 | 17 |
| 2 | 8 | 4 | 34 |
| 3 | 12 | 7 | 54 |
| 4 | 17 | 10 | 77 |
| 5 | 22 | 13 | 100 |

a. Costs of Additional Establishment Workers

This analysis expects establishments operating under the NSIS to experience an increase in labor costs. Under the NSIS, establishments will be required to dedicate labor to sort and remove unfit animals before ante-mortem inspection; trim and identify defects, such as dressing defects, contamination, and pathology defects, on carcasses and parts before post-mortem inspection; identify animals or carcasses that they have sorted and removed for disposal before FSIS inspection with a unique tag, tattoo, or similar device, and to develop, implement, and maintain written procedures to ensure that animals and carcasses that have been sorted and removed for disposal do not enter the human food supply and are properly disposed of; maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal; while conducting sorting activities, notify Agency inspectors if they suspect that an animal or carcass has a reportable or foreign animal disease; and maintain records documenting that products resulting from their slaughter operations meet the new definition of RTC pork product. Based on observations [41] of HIMP establishments and a comment from industry,[42] this increase in work is expected to require an increase in labor demand ranging from 6–11 additional workers per line per shift at large establishments. This analysis assumes each large establishment that converts to the NSIS will require 9 additional workers per line per shift. Due to data limitations, this analysis assumes small establishments that convert to the NSIS will require 1 additional worker per line per shift. Costs associated with this labor fall into 3 categories: Wages and benefits, training, and continuing education.

Establishment Labor Wage Increases

Many of the 22 large and 13 small non-HIMP market hog establishments that are assumed to adopt the NSIS operate multiple lines and shifts. Taking these multiple lines and shifts into consideration, the number of industry positions is estimated to increase by 383 if all high-volume establishments that have a history of exclusively slaughtering market hogs, adopt NSIS. The majority of these, 369, are attributable to the large establishments (41 (number of lines) × 9),[43] Table 7. The remaining 14 positions are attributable to the small establishments (14 (number of lines) × 1),[44] Table 7. According to the BLS, the estimated hourly wage for a Slaughterer and Meat Packer occupation (''production employee'') is $13.00.[45] A benefits and overhead factor of two was then used to estimate the total labor costs. The total hourly labor costs to industry for a production employee including benefits and overhead, is $26.00 per hour ($13.00 × 2 [46]). Based on data obtained through PHIS, the average large establishment slaughters swine 269 days annually. Assuming workers work 8-hour shifts, the total annual remuneration cost to these 22 large establishments is approximately $20.65 million, (369 × $26.00 × 269 × 8), Table 7. The average small establishment slaughters 244 days annually. Again, assuming workers work 8-hour shifts, the total annual remuneration cost to these 13 small establishments is approximately $0.71 million, (14 × $26.00 × 244 × 8), Table 7. These cost estimates take into consideration the fact that some establishments operate multiple lines and multiple shifts.

Costs for Training Online Sorters and Carcass-Inspection Helpers

Establishments are expected to incur costs associated with initially training employees to fill online sorter and carcass-inspection helper positions, annual replacement training, and continuing education training. This analysis assumes the cost to train online sorters and carcass-inspection helpers are similar to the costs of training production employees in HACCP, which range from $274 to $823 with a midpoint average of $549 per new employee.[47] To ensure a conservative estimate and account for employee rotation patterns as well as leave, FSIS assumes that establishments will train 4 employees for each new position. Under these assumptions, large establishments will need to train approximately 1,476 (369 × 4) employees, while small establishments will need to train approximately 56 (14 × 4) employees. The cost of this training ranges from $419,768 to $1,260,836, with a midpoint estimate of $0.84 million (1,532 × $549), Table 7.

To account for estimated turnover of establishment employees, FSIS projects that establishments will have to train approximately 452 (1,532 × 0.295) replacement employees annually, 435 at the large and 17 at the small establishments.[48] The additional annual training cost for new employees was estimated to also be similar to the costs of HACCP training. Therefore, FSIS estimates the combined annual training costs due to turnover to be approximately $0.25 million (452 ×

[41] Observations were obtained through a survey conducted, in February 2016, through the *Salmonella* Initiative Program and conversations with industry at a meeting, which took place in February 2016, with the North American Meat Institute.

[42] One corporation reported in a comment to the proposed rule that they hired and trained up to 11 employees per shift.

[43] Source: PHIS.

[44] Source: PHIS.

[45] BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2016. 51–3023 Slaughterers and Meat Packers *https://www.bls.gov/news.release/archives/ocwage_03312017.pdf* Accessed on 12/04/18. Last modified 3/31/17.

[46] To be consistent with analyses done by the Department of Health and Human Services, this analysis accounts for fringe benefits and overhead by multiplying wages by a factor of 2.

[47] Viator, C. et al. 2015. Costs of Food Safety Investments. Table 4–4. Training Costs for Management and Production Employees.

[48] This estimate was rounded up. This analysis uses the industry turnover rate for non-durable manufactured goods to estimate separations. Source: BLS Economic News Release Table 16. Annual total separations rates by industry and region, not seasonally adjusted. *https://www.bls.gov/news.release/archives/jolts_03162017.htm* Accessed on 12/04/18. Last updated on 3/16/17.

$549), with large establishments accounting for approximately $0.24 million (435 × $549) and small establishments accounting for approximately $9,333 (17 × $549), Table 7.

FSIS assumes that 1,080 (1,532 × 0.705) retained employees, 1,041 at the large and 39 at the small establishments, will require annual continuing education. This analysis assumes annual continuing education costs to be similar to annual HACCP refresher training costs, which range from $12 to $36 per employee, with a mid-point of $24.[49] Using the mid-point value, this analysis estimates the combined average recurring cost for continuing education is $25,920 (1,080 × $24), with large establishments accounting for approximately $24,984 (1,041 × $24) and small establishments accounting for approximately $936 (39 × 24).

Under the assumed adoption rate as set forth in Table 6, annualized wages and training cost to industry for staffing additional online personnel is approximately $16.61 million, applying a 3 percent discount rate[50] over 10 years, Table 7. The majority of this cost is attributed to wages and benefits, Table 7.

TABLE 7—ESTABLISHMENT LABOR COSTS

[M$]

| Type of establishment | Type of expense | Number of personnel | One-time cost | Recurring cost |
|---|---|---|---|---|
| Large | Wages | 369 | | $20.65 |
| | Initial Training | 1,476 | $0.81 | |
| | Training Due to Labor Turnover | 435 | | 0.24 |
| | Continuing Education | 1,041 | | 0.02 |
| Small | Wages | 14 | | 0.71 |
| | Initial Training | 56 | 0.03 | |
| | Training Due to Labor Turnover | 17 | | 0.009 |
| | Continuing Education | 39 | | 0.001 |

Totals

| | |
|---|---|
| One-Time | 0.84 |
| Recurring Cost | 21.63 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | 16.61 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | 15.97 |

b. Costs of Capital Improvements

The NSIS may require a minor capital improvement if the establishment does not already provide a mirror at the carcass inspection station. All the large high-volume establishments are already required to provide mirrors under existing regulations. The following analysis excludes further consideration of the costs of requiring a mirror due to its minor potential cost for a limited number of establishments.[51] If an establishment believes that additional capital expenditures will result in a benefit, they may voluntarily reconfigure or update their facilities to fully capture all the potential production efficiencies offered through participation in the NSIS. Examples of such changes include line reconfiguration, which can cost between $10,000 to $250,000[52] and the creation of an inspection station, which can cost between $5,000 and $6,000.[53] Establishments may reduce these costs by coordinating these facility updates with previously planned establishment renovations.

c. Costs of Developing Ante-Mortem Written Procedures

Under the final rule, establishments operating under the NSIS are required to develop and maintain in their HACCP systems (HACCP plans, sanitation SOPs, or other prerequisite programs) written procedures for the segregation, identification, and disposition of animals suspected of having one of the condemnable generalized diseases or conditions listed in 9 CFR 309. This analysis assumes establishments will coordinate this work and costs with the development of written procedures to prevent the contamination of carcasses and parts by enteric pathogens, and visible fecal material, ingesta, and milk throughout the entire slaughter and dressing operation, a mandatory component of the final rule. Details of these costs can be found in the sanitary dressing costs section III.G.2.a.

d. Costs Associated With Ready-to-Cook Pork Standards

Under the final rule, establishments operating under the NSIS are required to collect, record, and analyze documentation to demonstrate that the products resulting from their slaughter operation meet the definition of RTC pork products. This analysis estimates the labor costs to collect, record and analyze such documentation under two assumptions. First, FSIS assumes that establishments will assign the task to a quality control (QC) technician, with an hourly compensation rate, which

[49] Viator, C. *et al.* 2015. Costs of Food Safety Investments. Table 4–4. Training Costs for Management and Production Employees.

[50] As is explained in Circular A–4, a discount factor should be used to adjust the estimated benefits and costs for differences in timing. For regulatory analysis, net benefit estimates should be provided using a 3 percent and 7 percent discount rate. Source: Circular A–4, OMB, September 17, 2003, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[51] The cost was estimated to be very small because all 22 large high-volume establishments and potentially several of the 13 small high-volume establishments are already required to provide mirrors. As such, any new expense would be negligible compared to the industry costs included in the analysis.

[52] In a May 2004 study, ERS estimated the cost of compliance per establishment with the PR/HACCP rule. Capital expenditures in Hog Slaughter establishments were estimated to be $251,800.

Ollinger, Moore, Chandran (2004). Meat and Poultry Establishments' Food Safety Investments. USDA, Economic Research Service.

[53] Modernization of Poultry Slaughter Inspection; Final Rule, 79 FR 49566 (2014).

includes wages, benefits, and overhead, of $68.52.[54] [55] Second, FSIS assumes that this work will take 1 hour at a large establishment and ½ hour at a small establishment per day. As is explained in the Draft Market Hogs HIMP paper,[56] large swine establishments can verify they meet OCP performance standards by taking 24 unit samples, requiring roughly 1 hour to collect, record, and analyze the data. Based on information obtained through PHIS, the average large swine establishment operates 269 days per year. This equates to an annual cost of approximately $18,432 (269 × 1 × $68.52), or approximately $0.41 million for all 22 non-HIMP establishments ($18,432 × 22). Similarly, the cost to an average small establishment, which based on data obtained through PHIS operates 244 days a year, is approximately $8,359 (244 × 0.5 × $68.52), or approximately $0.11 million for all 13 small establishments ($8,359 × 13). Combined, under the assumed adoption rate as set forth in Table 6, these costs are expected to increase NSIS establishments' annual labor costs by approximately $0.39 million, applying a 3 percent discount rate over 10 years, Table 8.

TABLE 8—COST OF RTC REQUIREMENTS

[M$]

| Type of market hog only establishment | Number of establishments | Recurring |
|---|---|---|
| | | Labor |
| Large | 22 | $0.41 |
| Small | 13 | 0.11 |
| Totals * | | |
| Recurring Cost | | 0.51 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | 0.39 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | 0.38 |

* Note, some of the totals may not equal the sum due to rounding.

2. Costs Associated With Requirements for All Swine Slaughter Establishments

The mandatory costs of the final rule will apply to all 612 swine slaughter establishments and begin on the effective date for these requirements. These costs are associated with (a) written procedures to prevent visible fecal material, ingesta, and milk contamination; and (b) sampling and analysis for microbial organisms to monitor process control for enteric pathogens.

a. Costs of Developing, Composing, Training, Monitoring, Recording, and Verifying Written Sanitary Dressing Plans

Under the mandatory portion of the final rule affecting all Federally inspected establishments that slaughter swine, FSIS is requiring that all official swine slaughter establishments develop, implement, and maintain in their HACCP systems written procedures to prevent the contamination of carcasses and parts by enteric pathogens, and visible fecal material, ingesta, and milk throughout the entire slaughter and dressing operation. This cost component for establishments includes: (1) Developing and incorporating these procedures into their food safety system, (2) training, and (3) monitoring, recordkeeping, and verification. This analysis assumes 606 swine establishments will incur these costs.[57]

Costs for Developing and Composing a Written Sanitary Dressing Plan

FSIS assumes incorporating written sanitary dressing plans into an establishment's HACCP system will result in a one-time HACCP plan reassessment cost. According to RTI's Costs of Food Safety Investments report,[58] the mid-point costs of a HACCP plan reassessment for large establishments is $730, the mid-point costs for small and very small establishments is $365.[59] The cost to large establishments is approximately $16,060 (22 × $730), small establishments is approximately $38,325 (105 × $365), and very small establishments is approximately $174,835 (479 × $365). The annualized costs to industry with a 3 percent discount rate for all 606 swine slaughter establishments is approximately $0.03 million, Table 9.

[54] BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2016. 19–1021 Food Scientist and Technologist. <*https://www.bls.gov/news.release/archives/ocwage_03312017.pdf*>. Accessed on 12/04/18. Last Modified 3/31/2017.

[55] To be consistent with analyses done by the Department of Health and Human Services, this analysis accounts for fringe benefits and overhead by multiplying wages by a factor of 2.

[56] Draft Market Hogs HIMP (HACCP-Bases Inspection Models Project). Draft 6/21/05. <*https://www.fsis.usda.gov/wps/wcm/connect/d6ccbad7-59e0-43f5-bf54-1987152ccfe8/HIMP_Market_Hog.pdf?MOD=AJPERES.*>.

[57] One corporation has informed FSIS, through public comment, that all six of its swine harvest facilities have written sanitary dressing plans. As such, they were not included in this portion of the cost analysis, which reduced annual costs by roughly $87,000 as compared to the proposed rule.

[58] Viator, C. et al. 2015. RTI International collected data on the cost of food safety investments for the production of meat and poultry products at the pre-harvest and slaughter and processing stages. This data was provided to FSIS in a final report titled 'Costs of Food Safety Investments' and was prepared by Catherine L. Viator, Mary K. Muth, and Jenna E. Brophy. The contract number is No. AG–3A94–B–3–0003. The order number is AG–3A94–K–14–0056.

[59] Viator, C. et al. 2015. Table 4–1. Costs of HACCP Plan Development, Validation and Reassessment per HACCP.

TABLE 9—WRITTEN SANITARY DRESSING PLAN DEVELOPMENT

[M$]

| HACCP size | Number of establishments | One-time cost |
|---|---|---|
| Large | 22 | $0.02 |
| Small | 105 | 0.04 |
| Very Small | 479 | 0.17 |
| Totals | | |
| One-Time Cost | | 0.23 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | 0.03 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | 0.03 |

Costs for Training Establishment Personnel on Executing a Written Sanitary Dressing Plan

FSIS assumes training programs will be utilized to ensure that establishment personnel understand and can execute the sanitary dressing plan. This training includes a one-time initial training cost to the establishment, a recurring cost of training new hires due to separations, and the cost of conducting annual refresher training. This portion of the model is informed by the RTI Costs of Food Safety Investments report.[60] As is noted in the RTI report, these costs are based on the amount of time a panel of experts recommends establishments spend on training, which may exceed the amount of time establishments spend on training. Due to data limitations, this analysis assumes the number of establishment employees conducting sanitary dressing tasks at swine establishments is equal to the number of employees conducting sanitary dressing tasks at beef slaughter establishments.[61] This is likely an overestimate because unlike beef, the majority of swine are scalded, de-haired, and polished prior to opening the carcass, which decreases the need for employees to conduct sanitary dressing tasks.

As seen in Table 10, costs are shared across HACCP sizes, with large establishments incurring higher costs. The rate of new hires, 29.5 percent, is derived from the BLS, 2016 Turnover Rate for Non-Durable Manufacturing Goods.[62] Likewise, the retention rate for the refresher training is one minus the turnover rate. The total one-time cost to train the employees for all 606 establishments is roughly $1.00 million, while the total recurring costs is roughly $0.44 million, Table 10. The annualized costs with a 3 percent discount rate over 10 years for Sanitary Dressing task related training is $0.55 million, Table 10.

TABLE 10—SANITARY DRESSING TRAINING COSTS

[M$]

| HACCP size | Number of establishments | Average number of employees | Training costs | | |
|---|---|---|---|---|---|
| | | | One-time | Recurring | |
| | | | Initial | New hires | Refresher |
| Large | 22 | 179 | $0.48 | $0.14 | $0.07 |
| Small | 105 | 25 | 0.32 | 0.09 | 0.04 |
| Very Small | 479 | 3 | 0.20 | 0.06 | 0.03 |
| Totals * | | | | | |
| One-Time Cost | | | | | 1.00 |
| Recurring Cost | | | | | 0.44 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | | 0.55 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | | 0.57 |

* Note, some of the totals may not equal the sum due to rounding.

[60] Viator, C. et al. 2015.

[61] The Survey is at: *http://www.fsis.usda.gov/wps/wcm/connect/184a3baa-2f73-4651-8aba-68124580f4e0/Pathogen_Controls_in_Beef_Operations_Survey.pdf?MOD=AJPERES.* The survey report is at: *http://www.fsis.usda.gov/wps/wcm/connect/6d37a1fc-a3e1-40b6-90cc-719bdb391522/STEC_Survey_Comments_Summary.pdf?MOD=AJPERES.*

[62] Source: BLS Economic News Release Table 16. Annual total separations rates by industry and region, not seasonally adjusted. <*https://www.bls.gov/news.release/archives/jolts_03162017.htm*> Accessed on 12/04/18. Last updated on 3/16/17.

Cost of Monitoring, Recordkeeping, and Verification Associated With the Written Sanitary Dressing Plan

This analysis also estimates the annual monitoring, recordkeeping and verification costs associated with maintaining sanitary dressing procedures. This analysis assumes it will take a production employee 5 minutes to monitor and 5 minutes to maintain records for the sanitary dressing procedures, for a total of 10 minutes. Establishments are required to verify the plan each day of production. In addition, this analysis assumes it will take a QC manager 15 minutes to perform a verification task and that such task will be completed each week that slaughter takes place. Combined, these tasks are estimated to cost the entire industry roughly $0.84 million annually, applying a 3 percent discount rate over 10 years, Table 11.

TABLE 11—MONITORING, RECORDKEEPING AND VERIFICATION COSTS

[M$]

| Recurring costs | | | | |
|---|---|---|---|---|
| HACCP size | Monitoring | Recordkeeping | Verification | Combined |
| Large | $0.01 | $0.01 | $0.03 | $0.05 |
| Small | 0.04 | 0.04 | 0.12 | 0.20 |
| Very Small | 0.07 | 0.07 | 0.44 | 0.58 |
| Totals * | | | | |
| Recurring Cost | | | | 0.84 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | 0.84 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | 0.84 |

* Note, some of the totals may not equal the sum due to rounding.

Summary Costs of Written Sanitary Dressing Procedures

Table 12 provides an overview of the one-time and recurring costs associated with requiring all establishments to develop written sanitary dressing procedures. Combined, these tasks are expected to cost the industry $1.41 million annualized, assuming a 3 percent discount rate over 10 years, Table 12.

TABLE 12—SUMMARY OF COSTS ASSOCIATED WITH REQUIRING WRITTEN SANITARY DRESSING PROCEDURES

[M$]

| HACCP size | Number of establishments | One-time costs | | Recurring costs | |
|---|---|---|---|---|---|
| | | Development | Initial training | Training | Monitoring, recording, validating |
| Large | 22 | $0.02 | $0.48 | $0.21 | $0.05 |
| Small | 105 | 0.04 | 0.32 | 0.14 | 0.20 |
| Very Small | 479 | 0.17 | 0.20 | 0.09 | 0.58 |
| Totals * | | | | | |
| One-Time Cost | | | | | 1.23 |
| Recurring Cost | | | | | 1.27 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | | 1.41 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | | 1.44 |

* Note, some of the totals may not equal the sum due to rounding.

b. Cost of Carcass Sampling and Analysis for Microbial Organisms

This section reviews the potential changes in costs associated with the alterations to microorganism testing. These costs are limited to the changes associated with removing the requirement that swine establishments test carcasses for generic *E. coli* and replacing it with new testing requirements described above. While the final rule also removes the codified *Salmonella* pathogen reduction performance standards for swine, because the codified standards are already no longer in use, there are no potential costs or benefits to industry. Such changes fall under four categories: Sampling plan reassessment, transferring from prescriptive to process testing requirements, sampling rates, and sample recordkeeping. This analysis uses results from the RTI International Meat Industry Survey in Support of Public Health Risk-Based Inspection report [63] and Costs of Food

[63] Viator, C. et al. 2015. (a) RTI International designed and conducted surveys on industry practices to control pathogens and promote food safety. The sample design, administration procedures, analysis and results were provided to FSIS in a final report titled 'Meat Industry Survey

Safety Investments report.[64] Each of these categories is explained in detail below. Based on industry comment on the proposed rule, this analysis excludes the 11 large swine establishments that were participating in the SIP program when data for this analysis was collected. Under SIP, these establishments currently sample at an alternative frequency and we assume that they will continue to do so. As such, these 11 SIP swine slaughter establishments are not expected to change their process control sampling and will not experience a change in associated costs.

Cost of Process Control Sampling Plan Reassessment

This analysis assumes establishments will incur one-time costs of conducting a process control sample plan reassessment under the final 9 CFR 310.25(a)(2)(i). The RTI Costs of Food Safety Investments report estimates the costs of reassessing a microbiological sampling plan. For large establishments, these costs include labor, consultant fees, and travel expenses, which combined range from $27,320 to $81,960, with a midpoint of $54,640 per establishment. Costs to small and very small establishments are limited to labor expenses and range from $122 to $365, with a midpoint of $243 per establishment.[65] The annualized reassessment cost to industry is roughly $0.12 million, assuming a 3 percent discount rate over 10 years, Table 13.

TABLE 13—COST OF PROCESS CONTROL SAMPLING PLAN REASSESSMENT

[M$]

| HACCP size | Number of establishments | Per establishment (mid-point estimate) * | Total one-time costs |
|---|---|---|---|
| Large | 17 | $0.05 | $0.93 |
| Small | 105 | 243 | 0.03 |
| Very Small | 479 | 243 | 0.12 |
| Totals ** | | | |
| One-Time Cost | | | 1.07 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | 0.12 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | 0.14 |

* The values for Small and Very Small Establishments are in dollars.
** Note, some of the totals may not equal the sum due to rounding.

Cost of Transferring From Prescriptive To Process Specific Microbiological Testing Requirements

Prior to the final rule, regulations prescribed that each slaughter establishment test for generic *E. coli*.[66] In addition to mandated generic *E. coli* testing, many establishments voluntarily conduct additional microbiological testing to verify process control. Common microbiologic tests include APC, total plate count (TPC), and total coliforms. Based on the meat slaughter survey conducted by RTI, roughly 71 percent of very small, 80 percent of small, and 100 percent of large establishments conduct microbiological testing in addition to testing for generic *E. coli*.[67] Establishments voluntarily conducting additional testing are an indication that the generic *E. coli* testing is not the best means to verify process control in their respective establishments.

This analysis assumes that, if permitted to choose a microbiological test to ensure process control, establishments will select the single best test that demonstrates process control at their establishment. Under these assumptions, establishments that currently test for generic *E. coli* and conduct at least one other type of microbiological test will stop testing for generic *E. coli.* As a result, the 17 large (17 × 1.00), 41 small high-volume (51 × .80), 43 small low-volume (54 × .80), 4 very small high-volume[68] (6 × .714), and 338 very small (473 × .714) establishments that currently test for generic *E. coli* and at least one other microbial or pathogen indicator[69] will experience a cost reduction. Given the similarity in laboratory testing costs and costs associated with switching sampling programs, this analysis assumes the remaining 158 establishments that exclusively test for generic *E. coli* will continue to do so.

Calculating the cost reductions is a function of estimating the testing rate and testing costs. This analysis assumes all large, small, and very small high-volume,[70] establishments conduct 1 test, every 1,000 carcasses, and all low-volume establishments conduct 13 tests annually.[71] To calculate testing costs, this analysis estimates the associated labor expenses, laboratory fees, and shipping costs. The mean cost to an establishment to test a single generic *E. coli* sample in house is $25.97.[72] To have the sample tested at a contracted

in Support of Public Health Risk-Based Inspection' and was prepared by Catherine Viator, Sheri C. Cates, Shawn A. Karns, Peter Siegel, Ariana Napier, and Mary K. Muth. The contract number is No. AG–3A94–B–13–0003. The order No. is AG–3A94–K–13–0053.

[64] Viator, C. et al. 2015. (b).

[65] The report classifies establishments as either large or small. Given this data limitation, this analysis assumes very small and small establishments have similar reassessment costs.

[66] 9 CFR 310.25 (2018).

[67] Viator, C. *et al.* 2015. (a) P5–42. Question 3.1.

[68] Very small high-volume establishments slaughter more than 20,000 swine, or a combination of swine and other livestock exceeding 6,000 cattle and 20,000 total of all livestock.

[69] Question 3.1 from the Meat Industry Survey in Support of Public Health Risk-Based Inspection Report asks ''In addition to the generic *E. coli* testing of carcasses and Listeria testing of ready-to-eat (RTE) products required by FSIS regulation, does this establishment conduct microbiological testing? ''; 28.6% of very small, 20% of small, and 0% of large establishments responded no, meaning 71.4% of very small, 80% of small and 100% of large establishments conduct additional testing.

[70] Note that the 11 large establishments participating in SIP have been excluded from this analysis because they have an alternative sampling frequency.

[71] 9 CFR 310.25(a)(2)(iii)(B). The current regulation (9 CFR 310.25(a)(2)(v)) defines very low-volume swine slaughter establishments as slaughtering 20,000 head annually or fewer. For the purposes of this analysis, FSIS has labeled swine establishments that annually slaughter more than 20,000 head per year as high volume.

[72] Viator, C. et al. 2015. (b) Table 5–1.

lab, the cost is $49.81.[73] Based on survey results, this analysis assumes 79 percent of large, 28 percent of small and 5 percent of very small establishments test in house.[74] For these 443 establishments, the combined reduction in testing costs of no longer being required to test for generic *E. coli* was estimated to reduce annual testing costs by approximately $2.69 million, assuming a 3 percent discount rate over 10 years, Table 14.

TABLE 14—RECURRING COSTS (SAVINGS) FROM NO LONGER REQUIRING GENERIC *E. coli* TESTING

[M$]

| HACCP size | Number of establishments | (Savings) |
|---|---|---|
| Large | 17 | ($2.04) |
| Small High-Volume | 41 | (0.40) |
| Small Low-Volume | 43 | (0.02) |
| Very Small High-Volume | 4 | (0.01) |
| Very Small Low-Volume | 338 | (0.21) |
| Totals | | |
| Recurring Cost | | (2.69) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | (2.69) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | (2.69) |

* Note, some of the totals may not equal the sum due to rounding.

Process Control Sampling Rates

The final rule requires large, small, and very small high-volume establishments to take carcass samples at pre-evisceration and post-chill (for hot-boned products carcass samples must be taken pre-evisceration and after the final wash), which will increase the number of samples taken from 1 sample per 1,000 carcasses to 2 samples per 1,000 carcasses for large, small, and very small high-volume establishments. The final rule does not require low-volume establishments to increase their sampling rates. Under the final regulations, large establishments' annual process control sampling costs were estimated to increase by roughly $1.46 million, which is roughly $85,745 per establishment ($1.46 million/17),[75] Table 15. Small high-volume establishments' annual process control sampling costs were estimated to increase by roughly $0.30 million, which is roughly $5,974 ($0.30 million/51) per establishment, Table 15. Very small high-volume establishments' annual process control sampling costs were estimated to increase by roughly $8,890, which is roughly $1,482 ($8,890/6) per establishment, Table 15.

Cost of Process Control Sample Recordkeeping

This analysis takes into consideration the increase in recordkeeping costs associated with an increase in the sampling rate from 1 to 2 samples per 1,000 head. According to PHIS data, the average large non-SIP establishment slaughters approximately 3.87 million swine per year. As such, this analysis estimates that a large non-SIP establishment currently takes approximately 3,869 samples annually (3,869,276/1,000). The average small high-volume swine establishment slaughters 0.23 million swine per year and requires approximately 229 samples (228,784/1,000) annually. While the average very small high-volume establishment slaughters 51,925 swine per year and requires approximately 52 samples (51,925/1,000) annually. Assuming it takes 2.5 minutes to record the results of each sample, the average large establishment currently requires 9,673 minutes (2.5 × 3,869) per year; the average small high-volume establishment currently requires 573 minutes (2.5 × 229) per year; and the average very small high-volume establishment currently requires 130 minutes (2.5 × 52) per year. Requiring establishments to increase their sampling rates from 1 to 2 samples per 1,000 head will increase the average large non-SIP establishment's annual number of samples to 7,738 samples annually (3,869,276/1,000 × 2), which will require approximately 19,346 minutes (2.5 × 7,738)[76] annually. The same requirement will increase a small high-volume establishment's annual sampling to 458 (228,784/1,000 × 2), which will require approximately 1,145 minutes (2.5 × 458) annually. Likewise, a very small high-volume establishment's annual sampling will increase to 104 (51,925/1,000 × 2), which will require approximately 260 minutes (2.5 × 104) annually. As such, the estimated additional time required for recordkeeping is approximately 9,673 minutes (19,346 − 9,673) for large non-SIP establishments; 572 minutes (1,145 − 573) for small high-volume establishments; and 130 minutes (260 − 130) for very small high-volume establishments. Assuming a quality control technician with a compensation rate of $68.52 per hour[77][78] conducts this work, the additional costs to the average large non-SIP establishment is approximately $11,046 (9,673/60 × $68.52). Similarly, the additional cost to the average small high-volume and very small high-volume establishment is approximately $653 (572/60 × $68.52) and $148 (130/60 × $68.52, respectively). Scaling this up to all impacted establishments, the total increase in costs to all large non-SIP establishments is approximately $0.19 million ($11,046 × 17); $0.03 million ($654 × 51) for small high-volume establishments; and $888 ($148 × 6) for very small high-volume establishments, Table 15.

[73] Viator, C. et al. 2015. (b) Table 5–1.

[74] Viator, C. et al. 2015. (b).

[75] Values in text may differ because of rounding.

[76] Values in text may differ because of rounding.

[77] BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2016. 19–1021 Food Scientist and Technologist. *https://www.bls.gov/news.release/archives/ocwage_03312017.pdf* Accessed on 12/04/18. Last Modified 3/31/2017.

[78] To be consistent with analyses done by the Department of Health and Human Services, this analysis accounts for benefits and overhead by multiplying wages by a factor of 2.

The combined annualized sampling and recordkeeping cost to all large non-SIP, small, and very small high-volume establishments is roughly $1.99 million, applying a 3 percent discount rate over 10 years. Large establishments will potentially incur the majority of this cost, Table 15.

TABLE 15—COSTS CHANGES ASSOCIATED WITH INCREASE SAMPLING RATES

[M$]

| | Number of establishments | Costs | | |
|---|---|---|---|---|
| | | Sampling | Recordkeeping | Combined * |
| Large non-SIP | 17 | $1.46 | $0.19 | $1.65 |
| Small High-Volume | 51 | 0.30 | 0.03 | 0.34 |
| Very Small High-Volume (Dollars) | 6 | 8,890 | 888 | 9,778 |
| Totals | | | | |
| Recurring Cost | | | | 1.99 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | 1.99 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | 1.99 |

* Note, some of the totals may not equal the sum due to rounding.

Summary of Process Control Sampling Cost Changes

Overall, the changes in sampling requirements under the final rule were estimated to reduce industry wide sampling costs by about $0.57 million annualized over 10 years, applying a 3 percent discount rate, Table 16. However, only the 443 establishments that currently conduct multiple types of microbiological tests will potentially experience a reduction in cost. The remaining establishments, roughly 158 small and very small establishments, will potentially incur a portion of the one-time costs associated with plan reassessment, Table 16. Cost increases associated with testing and recordkeeping will be exclusively borne by large, small, and very small high-volume establishments.

TABLE 16—SUMMARY OF CHANGES TO PROCESS CONTROL SAMPLING

[M$]

| Type of change | Cost (savings) | |
|---|---|---|
| | One-time | Recurring |
| Plan Reassessment | $1.07 | ..... |
| Converting to Process Control Sampling | ..... | ($2.69) |
| Testing Costs | ..... | 1.77 |
| Recordkeeping | ..... | 0.22 |
| Totals * | | |
| One-Time Cost | | 1.07 |
| Recurring Cost | | (0.70) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | (0.57) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | (0.55) |

* Note, some of the totals may not equal the sum due to rounding.

Summary of Voluntary and Mandatory Costs for Final Rule

The total annualized value of all costs to industry, under the assumed five-year adoption rate as shown in Table 6, is roughly $17.83 million, assuming a 10-year annualization and a 3 percent discount rate, Table 17. Large establishments that voluntarily switch to the NSIS incur the majority of costs. For example, the recurring labor costs associated with the NSIS is the single largest recurring cost to industry and is mostly incurred by large establishments. It should be noted that the five HIMP pilot study establishments have already incurred these costs, suggesting for those five establishments, the benefits of the NSIS outweigh the costs. It also suggests that the benefits of adopting the NSIS outweigh the costs for other establishments as well. Training staff accounts for the bulk of the costs associated with written sanitary dressing procedures. Sampling costs will potentially decrease for those establishments that currently conduct microbiological tests in addition to generic *E. coli.*

TABLE 17—COMBINED COSTS TO INDUSTRY

[M$]

| Type of cost | Number of establishments | Total costs | |
|---|---|---|---|
| | | One-time | Recurring |
| *Voluntary:* | | | |
| Establishment Labor | 35 | $0.84 | $21.63 |
| Ready to Cook | 35 | | 0.51 |
| *Mandatory:* | | | |
| Written Sanitary Dressing Procedures | 606 | 1.23 | 1.27 |
| Process Control Sampling | 601 | 1.07 | (0.70) |
| Totals * | | | |
| Number of Establishments ** | | | 612 |
| One Time Cost | | | 3.14 |
| Recurring Cost | | | 22.72 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | 17.83 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | 17.23 |
| Totals Mandatory * | | | |
| Number of Establishments ** | | | 612 |
| One-Time Cost | | | 2.30 |
| Recurring Cost | | | 0.58 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | 0.84 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | 0.88 |
| Totals Voluntary * | | | |
| Number of Establishments | | | 35 |
| One-Time Cost | | | 0.84 |
| Recurring Cost | | | 22.15 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | 17.0 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | 16.35 |

* Note, some of the totals may not equal the sum due to rounding.

** Note, 612 includes all swine slaughter establishments, including the 11 SIP establishments that were excluded from the process control sampling costs and the 6 establishments that were excluded from the written sanitary dressing plans costs.

*H. Potential Benefits of the Final Rule*

1. Potential Benefits Associated With Public Health

Switching existing FSIS inspection program personnel (IPP) activities toward more offline verification activities (*e.g.,* sanitation performance standards, sampling, fecal inspections, and other inspection requirements) is unlikely to result in a higher prevalence of *Salmonella* on market hog carcasses and is estimated to result in a lower prevalence of *Salmonella* on market hog carcasses, which in turn may lead to fewer human illnesses. This conclusion is supported by a two-part risk assessment which compares typical FSIS market swine inspection outcomes with the outcomes observed in a small subset of establishments that participated in the HIMP pilot study (referred to in the risk assessment as HIMP plants).

Stage 1 of the risk assessment consists of a multiple regression analysis to identify the relationships between establishment characteristics (including HIMP status) and carcass contamination prevalence. FSIS presents two different models for estimating the potential for avoiding illnesses in the risk assessment one using only empirical data and one using additional simulated data, see Tables 13 and 14 in the risk assessment and accompanying text. The results of the modeling with simulated data, had less uncertainty around the estimated change in illnesses—are not used in support of the final rule. The modeling without simulated data is carried through in this section. As a result, the uncertainty around estimated illnesses avoided is greater; however, the most likely estimated illnesses avoided are not affected. Stage 2 of the risk assessment consists of multiple scenario models in which combinations of plausible changes to inspection procedures are inserted into equations created using the coefficients computed in Stage 1. These scenarios produce estimates of changes in carcass contamination prevalence under the inspection procedures of NSIS.

Changes in estimated numbers of *Salmonella* illness are estimated based on a proportional relationship between carcass contamination prevalence and illnesses that has been published in the

peer-reviewed literature.[79] [80] This relationship was also validated internally in the risk assessment, with an analysis of variance (ANOVA) test indicating that carcasses slaughtered in establishments with relatively low prevalence of *Salmonella* did not show significantly different contamination load (measured by enumeration of *Salmonella* colony-forming units per gram) when compared with establishments with relatively high prevalence of *Salmonella.* In other words, the proportion of contaminated carcasses is more predictive of *Salmonella* illnesses than the contamination load of each contaminated carcass; thus, if the proportion of carcasses with no detectable *Salmonella* contamination increases with implementation of the NSIS, illnesses caused by consumers' exposure to these carcasses were estimated to decrease proportionally.

As with any risk assessment, FSIS's risk assessment relies on a number of assumptions. FSIS assumed that the differences between the process of slaughtering hogs and slaughtering poultry do not alter the relationship between the presence of *Salmonella* contamination post-slaughter and human illness.

FSIS also assumed, for the purpose of this risk assessment, that the relationship between *Salmonella* contamination of hog carcasses and downstream products such as pork parts (*e.g.,* pork chops) and ground pork closely mirrors that of the established relationship between *Salmonella* contamination of poultry (*e.g.,* chicken) carcasses and downstream products such as chicken parts and ground chicken. While FSIS did not conduct any specific analyses to examine this assumption, the Agency has conducted numerous peer-reviewed analyses of the relationship between *Salmonella* contamination frequency on chicken carcasses and chicken parts.[81] These analyses indicate that the prevalence of *Salmonella* contamination on downstream products (*e.g.,* parts) often exceeds that for the prevalence of Salmonella contamination in upstream products (*e.g.,* carcasses). The higher prevalence is logical given that samples of downstream products contain primals from multiple carcasses, increasing the likelihood of a single sample being contaminated.

The market hog *Salmonella* illness risk model estimates that the prevalence of *Salmonella* detected in carcasses may decline on average from an initial prevalence of 0.9407% to a final prevalence of 0.9066% if the 35 identified establishments adopt the new inspection system. This decrease in prevalence should correspond to an average decrease in illnesses due to market hog product consumption by an average of 2,533 annual cases.[82]

More specifically, CDC applies 14 empirical, population-adjusted, and Pert uncertainty distributions multiplicatively modeled as Monte Carlo distributions with repeated sampling and Bayesian characteristics to the data collected at their surveillance sites. CDC states that the illness estimates are robust but likely underestimates due to extrapolation from surveillance and outbreak data with underreporting not captured in the CDC uncertainty estimates based ultimately on laboratory confirmed cases. CDC's modeling approach used to estimate total uncertainty of illnesses is designed to capture multiple sources of uncertainty that were not explicitly modeled, that is, the uncertainty in CDC illness estimates captures components of consumer behavior, cross contamination and *Salmonella* inactivation and growth between production and consumption.[83] The uncertainty surrounding illness estimates is the largest contributor to overall uncertainty in the NSIS risk model. The total uncertainty in the case rate is estimated to be bounded at the 10th and 90th percentiles by a potential increase of 1,719 and a potential decrease of 6,685 cases, respectively. The total case uncertainty distribution is dependent on the uncertainty in the change in *Salmonella* prevalence in market hogs.

The prevalence estimates are modeled with data variability and robust uncertainty components taken from sampling data and model parameter estimates. Additional, unquantified uncertainty includes the possibility that differences between HIMP plants and non-HIMP plants that adopt NSIS not accounted for in the risk assessment could affect *Salmonella* prevalence. A number of potential differences, however, are taken into account in the risk assessment. The variability and uncertainty in the market hog proportion of illnesses is modeled from FSIS market hog slaughter data and Bayesian uncertainty. As demonstrated in the 2010–2011 Market Hog Baseline Study, the market hog slaughter process resulted in 2,390,482 carcasses produced per year and a weighted *Salmonella* contamination prevalence rate of 1.66%; the 10th percentile estimate for this value is 2,218,169 carcasses and the 90th percentile estimate is 2,561,973 carcasses. This uncertainty in the carcass prevalence rate in market hogs according to the peer reviewed prevalence model corresponds to the overall uncertainty in consumer *Salmonella* cases of illnesses from market hogs with an average of 69,857 cases and 10th and 90th percentiles of 40,778 and 104,333 cases respectively, under traditional inspection. With adoption of the new inspection system, the average number of cases is likely to decrease to 67,324.

[79] Williams M.S., Ebel, E.D., Vose, D. 2011. Framework for Microbial Food-Safety Risk Assessments Amenable to Bayesian Modeling. *Risk Analysis* 31(4):548–565.

[80] Ebel, E.E., *et al.* 2012. Simplified framework for predicting changes in public health from performance standards applied in slaughter establishments. *Food Control* 28(2): pp. 250 257.

[81] Ebel, E.D., Williams, M.S., Tameru, B. (2019) Relatedness of Salmonella contamination frequency on chicken carcasses and parts when processed in the same establishment. *Food Control* 100: 198–203.

[82] The relationship between carcass contamination prevalence and human illnesses modeled as in Williams *et al.,* 2010, Estimating changes in public health following implementation of hazard analysis and critical control point in the United States broiler slaughter industry, Foodborne Pathogens and Disease, 9 and Ebel *et al.,* 2012, Simplified framework for predicting changes in public health from performance standards applied in slaughter establishments, Food Control, 28.

[83] CDC's surveillance and outbreak attribution data are available in Scallan, E., *et al.* 2011. Foodborne Illness Acquired in the United States—Major Pathogens. *Emerging Infectious Diseases* 17(1): 7–15.

The market hog risk assessment estimates that if the 35 establishments expected to convert to the NSIS over 5 years do so, the number of human illnesses attributed to products derived from market hogs could reduce by an average of 2,533 *Salmonella* illnesses. The combined robust model estimate of quantified uncertainty in the case rate based on CDC *Salmonella* illness and FSIS market hog contamination data is estimated to be bounded at the 10th and 90th percentiles by an increase of 1,719 and a decrease of 6,685 cases, respectively. It is worth noting, however, that there is an approximately 80% likelihood of a decrease in illnesses.[84] The ERS estimates of the annual per case cost of foodborne illnesses for *Salmonella* range from roughly $321 to $5,820, with a mean of roughly $3,682.[85] These estimates factor in the costs of physician office, emergency room, and outpatient clinic visits, as well as hospitalizations, productivity loss, and deaths. Assuming approximately 2,533 averted cases of *Salmonella,* potential savings range from roughly $0.81 million to $14.74 million, with a midpoint of $9.33 million, Table 18. Health costs would increase by roughly $6.33 million if cases increased by 1,719, which corresponds to the 10th percentile, and each case cost $3,682, Table 18. Alternatively, health costs would decrease by roughly $24.62 million if 6,685 cases were averted, which corresponds to the 90th percentile, and each case cost $3,682, Table 18. Using the midpoint estimate of $9.33 million cost decrease and applying a five-year adoption rate, the annualized value is approximately $7.09 million, at a 3 percent discount rate, Table 18. These estimated benefits may underestimate total benefits because they do not include pain and suffering costs. They may also overestimate benefits and cost savings given the uncertainty between the number of illnesses and the number of carcasses with detectable *Salmonella.*

TABLE 18—POTENTIAL BENEFITS FROM AVERTED CASES OF SALMONELLA

| Percentile | Change in illnesses by scenario | Cost per illness * | | |
|---|---|---|---|---|
| | | Low | Mid | High |
| | | $321 | $3,682 | $5,820 |
| | | Scenario Costs, $M | | |
| 10th | 1,719 | $0.55 | $6.33 | $10.01 |
| Mean | (2,533) | (0.81) | (9.33) | (14.74) |
| 90th | (6,685) | (2.15) | (24.62) | (38.91) |
| Comparison of Mean Recurring Costs (M$) | | | | |
| Low | | | | |
| Recurring Cost | | | | 6.33 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | 4.81 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | 4.62 |
| Mid | | | | |
| Recurring Cost | | | | (9.33) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | (7.09) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | (6.81) |
| High | | | | |
| Recurring Cost | | | | (24.62) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | (18.71) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | ($17.97) |

* Source: USDA ERS, 2014, Cost Estimates of foodborne illnesses. *http://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses.aspx#48446* Accessed on 9/9/2011. Last updated on 11/12/2014.
Note, some of the totals may not equal the sum due to rounding.

[84] The primary conclusion for the purposes of this regulatory change, however, is that the NSIS is unlikely to result in a higher prevalence of *Salmonella* on market hog carcasses and may result in a lower prevalence of *Salmonella* on market hog carcasses, which in turn may lead to fewer human illnesses. As such, public health benefits are characterized as ''potential'' rather than ''expected'' benefits.

[85] USDA ERS, 2014, Cost Estimates of foodborne illnesses. *http://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses.aspx#48446* Accessed on 9/9/2011. Last Updated on 11/12/2014.

2. Other Benefits Associated With Modernizing Existing Regulations

The final rule will potentially reduce the regulatory burden on establishments by shifting from prescriptive to performance-based regulation. Based on the Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs Report, the five HIMP establishments' average line speed was approximately 12.49 percent faster than comparable establishments.[86] This increase in line speed is synonymous with an increase in industrial efficiency. To quantify the benefit associated with this efficiency gain, this analysis used the North American Meat Institutes' (NAMI's) average pork packer margins for 2013–2017, which was reported to be $15.20[87] per head in NAMI's 2017 Meat and Poultry Facts.[88] The pork packer margin is the price the packer receives less the cost of the hog and production costs, making it an estimate for accounting profits. However, economic profit may be more precisely associated with producer surplus. Economic profit is equal to the establishment's revenues minus its implicit and explicit costs. Implicit costs are costs establishments do not spend money on, such as opportunity costs, while explicit costs are costs establishments spend money on, such as labor or hogs. Accounting profits can be larger than economic profits because they exclude some implicit costs. FSIS requested, but did not receive, comment on refining this estimate so as to distinguish between accounting profit and economic profit.

By using accounting profits to estimate producer surplus, this analysis multiplied the change in quantity produced by half the per head margin, which is $7.60 ($15.20/2). This approach assumes that marginal costs increases as a function of quantity produced and that the marginal cost curve is linear, in which case the profit margin reaches zero for the last unit produced.

Assuming establishments increase their production by 12.49 percent and that this increased production has an average packer margin of $7.60 per head, an average large establishment's surplus could increase by approximately $3.78 million, while an average small high-volume establishment's surplus could increase by $0.34 million, all else being equal. Combined, such an increase in efficiency at all 35 establishments will increase producer surplus by roughly $87.64 million[89] (22 × $3.78 million + 13 × $0.34 million), which has an annualized benefit of roughly $66.93 million, assuming a 3 percent discount rate over 10 years, Table 19. This estimate takes into consideration the assumed five-year adoption rate. However, this increase in surplus may be an overestimate given that an increase in line speeds may change market hog prices, establishment production costs, retail prices, and export volumes. Additionally, this analysis does not account for a change in consumer surplus, which will be conditional on how an increase in line speed affects retail prices. The Agency sought, but did not receive, comment on the extent to which such an increase in line speeds will affect market hog prices, establishment hours of production, consumer prices, and export volumes.

TABLE 19—INDUSTRIAL EFFICIENCY, (BENEFITS)

[M$]

| Type of establishment | Number of establishments | Change in producer surplus | |
|---|---|---|---|
| | | Per establishment | Combined |
| Large | 22 | ($3.78) | ($83.26) |
| Small | 13 | (0.34) | (4.38) |
| Combined * | 35 | | (87.64) |
| Totals * | | | |
| Recurring Cost | | | (87.64) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | (66.93) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | (64.32) |

* Note, some of the totals may not equal the sum due to rounding.

[86] USDA FSIS Evaluations—HACCP Inspection Models Project (HIMP) for Market Hogs *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/evaluations-+himpAccessedon1/6/2017.* Last updated on 11/14/2014.

[87] Note that the increase in benefits as compared to the proposed rule is due to updating the margin used from NAMI's 2015 Meat and Poultry Facts to NAMI's 2017 Meat and Poultry Facts. The proposed rule used a five-year average of $4.10 (2010–2014) per head, with a low of a $2.85 (2012) per head loss to a $11.49 (2010) per head gain. While the Final Rule uses a five-year average of $15.20 (2013–2017) per head, with a low of a $4.50 (2013) per head gain to a $25.26 (2017) per head gain.

[88] Nalivka, J.S., The 2017 Meat and Poultry Facts, *NAMI* August 2018.

[89] Note, some of the totals may not equal the sum due to rounding.

The five HIMP establishments have demonstrated that establishments operating under the NSIS are able to increase their compliance with sanitation SOPs and HACCP regulations, lower their level of non-food safety defects, achieve equivalent or better *Salmonella* verification testing rates, and lower the level of violative chemical residues.[90] The five establishments that participated in the HIMP pilot study account for 15 percent of total swine production.

Additionally, the NSIS increases the Agency's ability to conduct more process and product verification and to increase monitoring of humane handling procedures, which is expected to improve animal welfare. FSIS inspectors devoted approximately 5.33 hours per shift to verifying humane handling activities for the Humane Activity Tracking System, HATS, categories in HIMP market hog establishments compared to approximately 4.29 hours per shift in the 21 non-HIMP market hog comparison establishments.[91] Under the NSIS, establishments sort, remove, and identify swine unfit for slaughter before FSIS ante-mortem inspection. More FSIS resources can be devoted to offline inspection activities because initial sorting and tagging functions are performed by establishment personnel. This change will provide Agency personnel with more time to conduct offline inspection activities.

*I. Potential Budgetary Impacts on the Agency*

Under the final rule, FSIS will shift Agency resources from online to offline activities. This analysis estimates how such a shift will reduce labor expenses by approximately $6.67 million annually, Table 20. However, Agency personnel at NSIS establishments will require additional training, the annualized cost of which is estimated to be approximately $0.30 million. Both annualized estimates apply a 3 percent discount rate over 10 years and takes into consideration the assumed five-year adoption period. The Agency will also update PHIS to allow establishments to enter information on animals removed from the slaughter process. This modernization process will likely cost FSIS approximately $300,000 but will be paid for using existing Agency funds. Details of these costs are provided below.

1. Agency Staffing

The following section discusses the impact on the Agency's budget due to reassignment of the inspection staff. As discussed in section F of this document, under traditional inspection, a single slaughter line at a large establishment requires up to 11 FTEs, while a small market hog establishment requires up to 2 FTEs. Under NSIS, a single slaughter line at a large establishment will potentially require 6 FTEs, while a small market hog establishment will potentially to require 3 FTEs. Under NSIS, large establishments with 2 slaughter lines will potentially require 10 FTEs,[92] while a small market hog establishment with 2 slaughter lines will potentially require 4 FTEs.

This analysis considers likely staffing changes at the 22 large and 13 small establishments which will potentially convert to NSIS over a course of five years. Combined, these establishments operate 46 shifts and 55 lines.[93] This analysis uses PHIS data provided by the Office of Field Operations (OFO) to calculate the number of FTEs assigned to each slaughter line. The FSIS Office of the Chief Financial Officer (OCFO) provided the wage and benefit data for each of these positions. This data was used to model the staffing changes in terms of both full- time positions and monetary value. Based on this data, to conduct traditional inspection, the Agency requires a combined 365 (334 at large and 31 at small establishments) FTE food or consumer safety inspectors at an annual cost of approximately $30.43 million, Table 20. If all 22 large non-HIMP and 13 small high-volume market hog only establishments convert to the NSIS, the Agency will require 218 (187 at large and 31 at small establishments) FTE food or consumer safety inspectors. This number was arrived at by assuming that under NSIS each of the 41 lines at the large establishments will have up to 3 FTEs assigned to them and each of the 32 shifts at the large establishments will have up 2 FTEs assigned to them ((41 lines × 3 FTEs) + (32 shifts × 2 FTEs) = 187 FTEs). Likewise, under NSIS, the 13 small establishments will each require between 2–3 FTEs, based on configuration, for a total of 31 FTEs. These staffing levels are based on FSIS's experience at HIMP establishments. The combined labor costs for NSIS is approximately $21.70 million, Table 20. This cost estimate includes estimated grade increases associated with converting to the NSIS. As is shown in Table 20, if all 22 large establishments convert to NSIS, this analysis estimates a net decrease of 147 (334 − 187) FTEs required for slaughter line inspection. The NSIS inspection program at these large establishments has a remuneration value of just over $18.58 million. A similar analysis of the 13 small high-volume establishments reveals no net change in the number of FTEs. However, because the NSIS requires all inspectors to be CSIs, many of the FTEs will likely be promoted from a FI to a CSI. Overall, if all 35 establishments converted to NSIS, the Agency will require 147 fewer FTEs for swine slaughter inspection, with potential annual decrease in costs of roughly $8.73 million, which is equal to roughly $6.67 million a year, assuming a 3 percent discount rate and the assumed five-year adoption period, Table 20.

[90] USDA FSIS Evaluations—HACCP Inspection Models Project (HIMP) for Market Hogs *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/evaluations-+himpAccessedon1/6/2017.* Last updated on 11/14/2014.

[91] USDA FSIS Evaluations—HACCP Inspection Models Project (HIMP) for Market Hogs *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/evaluations-+himpAccessedon1/6/2017.* Last updated on 11/14/2014.

[92] The difference in staffing between large establishments with 1 and 2 lines is because the Agency does not anticipate duplicating offline FTEs per line.

[93] The 22 large establishments operate 41 slaughter lines during 32 shifts, while the 13 small establishments operate 14 lines during 14 shifts, source PHIS.

TABLE 20—POTENTIAL CHANGES IN AGENCY STAFFING

[M$]

| Type | Traditional | | NSIS | | Increases (reductions) | |
|---|---|---|---|---|---|---|
| | Number positions | Labor costs | Number positions | Labor costs | Number positions | Labor costs |
| Large | 334 | $27.56 | 187 | $18.58 | (147) | ($8.98) |
| Small | 31 | $2.87 | 31 | $3.12 | 0 | 0.25 |
| Total | 365 | $30.43 | 218 | $21.70 | (147) | (8.73) |

Totals

| | |
|---|---|
| Recurring Cost | (8.73) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | (6.67) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | (6.42) |

Since 2008, the Agency has annually lost, through attrition, 270 food inspectors on average. See Table 21 for details. The Agency plans to utilize all personnel made available as a result of conversion to NSIS to fill these vacant positions.

TABLE 21—ANNUAL TURNOVER OF FOOD INSPECTORS

| Fiscal year | Number of positions |
|---|---|
| 2008 | 307 |
| 2009 | 264 |
| 2010 | 231 |
| 2011 | 268 |
| 2012 | 266 |
| 2013 | 246 |
| 2014 | 273 |
| 2015 | 305 |

TABLE 21—ANNUAL TURNOVER OF FOOD INSPECTORS—Continued

| Fiscal year | Number of positions |
|---|---|
| Average | 270 |

Source: OFO.

2. Agency Training

a. Three Day NSIS Methods Course

If all 22 large and 13 small market hog establishments convert to NSIS over the course of five years, as set forth in Table 6, the Agency estimated training 266 personnel (218 CSIs and 48 PHVs), with pay grades ranging from GS–8 to GS–13, on NSIS methods. The majority of these personnel, 228, are associated with 22 large establishments, while the remaining 38 are associated with 13 small establishments, Table 22. The associated one-time cost of such training includes labor and travel expenses associated with the employees receiving training, as well as temporary replacement labor costs required to fulfill the work that would have been completed by the employees receiving training. Based on the HIMP pilot study, this analysis assumes NSIS methods training will take 3 days and replacement labor will be equivalent to GS–13 step 5. Under these assumptions, the total one-time cost of NSIS training is approximately $0.64 million ($0.56 million for all large establishments and $0.08 million for all small establishments), Table 22. This one-time cost equals approximately $0.07 million if it were annualized over 10 years under a 3 percent discount rate, Table 22.

TABLE 22—THREE DAY NSIS TRAINING COURSE

[M$]

| Type of establishment | Cost of trainee | | Replacement labor | | Combined costs |
|---|---|---|---|---|---|
| | Number of inspectors requiring training | Costs of wages and benefits for trainees | Number of replacement inspectors required | Costs of wages and benefits for replacements | |
| Large | 228 | $0.21 | 228 | $0.34 | $0.56 |
| Small | 38 | 0.03 | 38 | 0.06 | 0.08 |

Totals *

| | |
|---|---|
| One-Time Cost | 0.64 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | 0.07 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | 0.07 |

* Note, some of the totals may not equal the sum due to rounding.

b. Fill an Increase Need for Consumer Safety Inspectors

Under the final rule, slaughter line inspectors at a NSIS establishment will work both on and off the slaughter line. As such, every inspection position will fall under the CSI position classification. To fill the increase in demand for CSIs, the Agency plans to train existing FIs. Training includes a four-week meat inspector course titled Inspection Methods (IM) and a one-day computer familiarization course. If all 22 large establishments convert to NSIS, the Agency will need an additional 82 CSIs. Likewise, if all 13 small market hog establishments convert, the Agency will need an additional 16 CSIs. Converting a FI into a CSI may result in a grade increase, the cost of which has been included in the Agency Staffing section above. The combined one-time cost for converting FIs into CSIs is roughly $2.16 million, Table 23. Nearly half of this cost stems from the need for replacement labor. Again, under the projected five-year adoption rate, as set forth in Table 6, and annualized over 10 years under a 3 percent discount rate, the cost for converting FIs to CSIs is approximately $0.23 million, Table 23.

TABLE 23—COST OF CONVERTING A FOOD INSPECTOR INTO A CONSUMER SAFETY INSPECTOR

[M$]

| Training component | Labor | | Travel, M&IE, and lodging | Combined costs |
|---|---|---|---|---|
| | Trainee | Replacement | | |
| Four Week IM Course | $0.52 | $0.98 | $0.59 | $2.09 |
| One Day Computer Training | 0.03 | 0.05 | | 0.07 |
| Totals * | | | | |
| One-Time Cost | | | | 2.16 |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | | | 0.23 |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | | | 0.25 |

* Note, some of the totals may not equal the sum due to rounding.

Combined Estimated Budgetary Impacts

The Agency's budget will potentially be impacted both by changes to personnel and training requirements. First, on average, there will be fewer Agency inspection personnel per slaughter line operating under NSIS. If all 22 large and 13 small establishments convert to NSIS over the course of five years, the Agency will require approximately 147 fewer FTEs to inspect the 55 [94] slaughter lines operating at these establishments. The annual remuneration value of these 147 positions is roughly $8.73 million, Table 24. Second, the Agency will need to train approximately 266 personnel on NSIS methods at a one-time cost of approximately $0.64 million, Table 24. Third, the Agency plans to meet the increase in demand for CSIs by converting existing FIs into CSIs. The one-time cost of doing so is approximately $2.16 million, Table 24. The annualized value of the combined changes to the Agency's budget is a net reduction of roughly $6.38 million, over 10 years assuming a 3 percent discount rate, Table 24.

TABLE 24—COMBINED CHANGES TO FSIS'S BUDGET

[M$]

| | Total costs | |
|---|---|---|
| | One-time | Recurring |
| Changes to Agency Staffing | | ($8.73) |
| Three Day NSIS Training | $0.64 | |
| Converting Food Inspectors into Consumer Safety Inspectors | 2.16 | |
| Totals | | |
| One-Time Cost | | 2.80 |
| Recurring Cost | | (8.73) |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | (6.38) |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | (6.09) |

*J. Net Benefits*

Assuming all high-volume large and small exclusively market hog establishments convert to NSIS (5 HIMP, 22 large, and 13 small high-volume), the rule is anticipated to have a net benefit of approximately $62.56 million a year, annualized over 10 years assuming a 3 percent discount rate, Table 25. The majority of the costs will be incurred by the 35 non-HIMP establishments that will potentially voluntarily switch to the NSIS in the form of increased labor needs.

[94] Source: PHIS.

TABLE 25—NET COSTS AND (BENEFITS)

[M$]

| | Number of establishments | One-time | Recurring |
|---|---|---|---|
| Costs to Industry | | $3.14 | $22.72 |
| Voluntary * | ** 40 | 0.84 | 22.15 |
| Mandatory | 612 | 2.30 | 0.58 |
| Health Benefits *** | | | (9.33) |
| Industrial Efficiency | | | (87.64) |
| Impacts to Agency's Budget | | 2.80 | (8.73) |
| Totals | | | |
| One-Time Cost | | $5.94 | |
| Recurring Cost | | (82.98) | |
| Annualized Costs, Assuming a 3% Discount Rate Over 10 Years | | (62.56) | |
| Annualized Costs, Assuming a 7% Discount Rate Over 10 Years | | (60.00) | |

* Further explanation and details on the NSIS adoption rate are provided in section G. Potential Cost of the Final Rule, Table 6: NSIS Adoption Rate and section J. Net Benefits, Table 26: Quantified Cost and (Benefits) of Various Adoption Rates

** Note, this includes 5 HIMP establishments, which were not estimated to incur any cost or benefits associated with the NSIS

*** Further explanation and details on the range of health benefits have been provided in section H. Potential Benefits of the Final Rule, Table 18: Health Benefits from Averted Cases of *Salmonella.* The value of health benefits ranges from a $6.33 million decrease to a $24.62 million increase in health benefits, with a mean increase in benefits of $9.33 million, assuming a cost per illness of $3,682.

**** Note, some of the totals may not equal the sum due to rounding.

Given the lack of data with which to make cost-benefit comparisons across the industry, Table 26 provides a range of possible adoption scenarios and their corresponding costs and benefits. Under scenario A, only the 5 HIMP establishments adopt the NSIS. Because these 5 establishments are already operating under NSIS practices, there will not be any additional voluntary costs or benefits associated with these 5 establishments adopting the NSIS. However, 606 establishments will incur costs associated with the final rule's mandatory components. As such, scenario A has a net cost. Scenario B assesses the net cost and benefits of just 6 establishments adopting the NSIS (5 HIMP and 1 large). This scenario reveals that the rule is net beneficial if just 1 large establishment adopts the NSIS in addition to the 5 HIMP establishments. Scenarios C, D, and E measure the net costs and benefits of 50, 75, and 100 percent of the 35 non-HIMP establishments converting to the NSIS, respectively. Each of these scenarios are net beneficial.

TABLE 26—QUANTIFIED COST AND (BENEFITS) OF VARIOUS ADOPTION RATES

[M$] ^

| | Number to adopt * | Costs | | (Benefits) | | | Net |
|---|---|---|---|---|---|---|---|
| | | Mandatory @ | NSIS | Health | Line speeds | Agency budget | |
| A | 5 | $0.84 | $0.0 | $0.0 | $0.0 | $0.0 | $0.84 |
| B | 6 | 0.84 | 0.86 | (0.27) | (3.78) | (0.38) | (2.73) |
| C | 23 | 0.84 | 8.34 | (3.59) | (33.34) | (3.14) | (30.90) |
| D | 32 | 0.84 | 13.08 | (5.52) | (51.51) | (4.88) | (47.99) |
| E | 40 | 0.84 | 17.0 | (7.09) | (66.93) | (6.38) | (62.56) |

* These numbers include the 5 HIMP establishments. However, because these establishments are already conducting NSIS practices, they did not contribute to quantified NSIS costs, health benefits, or the impacts to the Agency's budget.

@ These costs are incurred by all 612 swine establishments.

^ Annualized Assuming a 3% Discount Rate Over 10 Years

* Note, some of the totals may not equal the sum due to rounding.

*K. Alternatives*

Table 27: Alternative Policy Options

| Alternatives | Benefits | Costs | Net |
|---|---|---|---|
| A. No action (Baseline) | 1. No additional costs to industry. | 1. Potential for inefficient use of agency resources.<br>2. No potential increase in industrial efficiency.<br>3. Lack of incentive for establishments to innovate and improve their process controls.<br>4. No potential health benefits. | |
| B. Mandatory Portion of the Final Rule Only | 1. In comparison to the baseline, potential $0.57M in Process Control Sampling cost savings. | 1. In comparison to the baseline, potential $1.41M in Other Industry Costs. | Costs of $0.84M |
| C. Final Rule (40 Establishments Adopt NSIS) | 1. Potential $7.09M in averted illnesses.<br>2. Potential $66.93M in Industrial Efficiency.<br>3. Potential $0.57M in Process Control Sampling cost savings.<br>4. Roughly $6.67M in Agency Labor Savings. | 1. Potential $16.61M Increase in Industry Labor Costs<br>2. Potential $1.80M in Other Industry Costs<br>3. Roughly $0.30M in Agency Training Costs | Benefits of $62.56M |
| D. Require All 612 Establishments Adopt NSIS | 1. Potentially more than $7.09M in averted illnesses. | 1. Potential $25.9M Increase in Industry Labor | Benefits of $47.59M |

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*A—Taking No Action (Baseline)*

FSIS considered maintaining the current inspection system for all 612 swine slaughter establishments. The Agency rejected this alternative because it would forgo the benefits provided by the NSIS. These benefits include the establishment's ability to innovate and develop process controls which increase foodborne hazard detection and more efficiently use all their resources. Taking no action would also forgo potential industrial efficiency increases.

Further, no action would result in the Agency continuing to dedicate resources to food quality issues, at the expense of increasing offline activities benefitting food safety. Last, taking no action would also forgo potential health benefits identified under the final rule.

*B—The Mandatory Portion of the Final Rule*

FSIS considered limiting the final rule to only include new requirements that affect all swine slaughter establishments. Under such a scenario, quantified benefits are limited to an estimated $0.57 million reduction in process control sampling costs. This cost reduction will potentially be off-set by a $1.41 million increase in other industry costs associated with requiring written sanitary dressing plans. In comparison to the baseline, this scenario has a net cost of roughly $0.84 million. Additionally, under such a scenario, the Agency's inspection staff would not be reassigned, and the Agency would continue to require the same number of inspectors. As such, the Agency's labor costs would not decrease by the estimated $6.67 million. However, because FIs would not be converted into CSIs nor will inspectors require additional training, the Agency would not incur the corresponding $0.30 million in training costs ($0.07 for NSIS training plus $0.23 in CSI training). As mentioned earlier, simultaneously increasing unscheduled and scheduled inspection procedures and decreasing scheduled but not performed procedures accrues most of the public health benefits. The unscheduled and scheduled tasks are currently not performed as a result of lack of offline personnel. In comparison to the final rule, this alternative would eliminate most of the public health benefits associated with the rule, which are estimated at $7.09 million annually. Additionally, line speed restrictions would remain in place, leading to an estimated loss of over $36.14 million in industrial efficiency gains. FSIS has rejected this alternative in light of its estimated net cost as compared to the baseline as well as the decrease in net benefits as compared to the final rule.

*C—The Final Rule*

Applying a 3 percent discount rate over 10 years the costs associated with the final rule includes $16.61 million in additional industry labor costs, $1.80 million in other industry costs including costs associated with meeting ready to cook standards and written sanitary dressing plans, as well as $0.30 million in Agency training costs. The quantified health benefits of the final rule are limited to reductions in *Salmonella* illnesses and have an estimated value of $7.09 million, assuming a 3 percent discount rate. Allowing establishments to set line speeds so long as they maintain process control will potentially increase their efficiency by $66.93 million, assuming a 3 percent discount rate. The final rule could potentially reduce industry costs associated with process control sampling by roughly $0.57 million, assuming a 3 percent discount rate. Additionally, the final rule could potentially reduce the Agency's labor costs by roughly $6.67 million, assuming a 3 percent discount rate. In comparison to the baseline, the final rule has an estimated net benefit of $62.56 million, assuming a 3 percent discount rate over 10 years, and as such, the Agency recommends the final rule.

*D—Requiring All Federally Inspected Establishments Adopt the New Swine Inspection System*

FSIS considered requiring all federally inspected swine slaughter establishments to convert to NSIS. This would expand NSIS from the 5 large HIMP, 22 large and 13 small high-volume non-HIMP establishments expected to convert under the final rule to include 572 additional establishments. This expansion would include low-volume establishments that slaughter all types of swine as well as other establishments that slaughter a mix of species.

In comparison to the baseline, the benefits of this alternative potentially include more than $7.09 million in averted illnesses, a $66.93 million increase in industrial efficiency, $0.57 million in industrial savings associated with process control sampling requirements, assuming a 3 percent discount rate over 10 years. While compared to the baseline, this alternative reduces Agency labor costs by $2.72 million, assuming a 3 percent discount rate over 10 years. However, this alternative's Agency labor costs savings are less than the final rule's Agency labor costs savings because this alternative would result in additional promotions and training in small and very small establishments. The production at these 572 additional establishments represents less than 8 percent of total production and, as such, is not expected to return substantial reductions in contamination prevalence or illnesses and falls outside of the current risk assessment. In particular, the uncertainty around measurement and model parameters that is already included in the health benefit calculations for the final rule likely produce wide enough estimates that the impact of adopting the NSIS in all establishments would have an effect within the uncertainty bounds. The increase in industrial efficiency remains similar to that of the final rule because these additional establishments are generally less automated and maintain slower line speeds to address higher rates of quality defects associated with non-market hogs.

In comparison to the baseline, the potential costs associated with this alternative include a $25.90 million increase in industrial labor, a $3.14 million increase in other industry costs, which include costs associated with RTC standards and written sanitary dressing plans, as well as roughly $0.68 million in Agency training costs. In comparison to the final rule, the additional increases in costs to industry are substantially higher and predominately fall on small and very small business. While this alternative has a net benefit of $47.59 million, assuming a 3 percent discount rate over 10 years, the Agency rejects it because its net benefit is less than the final rule.

## IV. Regulatory Flexibility Act Assessment

The FSIS Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). FSIS used an establishment's HACCP processing size, which applies to an individual establishment, as a proxy for business size. HACCP processing sizes are the following: large establishments have 500 or more employees; small establishments have between 10 and 499 employees; very small establishments have fewer than 10 employees or annual sales of less than $2.5 million. Section III provides additional details on costs incurred by small businesses.

The final rule's mandatory requirements will affect approximately 584 small entities—105 small and 479 very small. First, the mandatory requirements include that all small and very small establishments create written sanitary dressing plans with cost components of development of the plan, training of employees, and recordkeeping, at an annualized cost of $1,869 per establishment, applying a 3 percent discount rate over 10 years. Second, the mandatory changes to process control sampling requirements could potentially decrease small establishments' sampling costs by roughly $984 per establishment annually, applying a 3 percent discount

rate over 10 years. In addition to this sampling cost reduction, the Agency will allow small and very small low-volume establishments to modify their sampling plans to collect samples less frequently once they have collected 13 consecutive weekly samples and can demonstrate that they are not exceeding their upper control limit and that they are effectively maintaining process control. FSIS is also allowing establishments to develop sampling plans that are more tailored to their specific operation, and thus more effective in monitoring their specific process control as compared to the current generic *E. coli* criteria. Therefore, the final rule's mandatory requirements could potentially increase small establishments' costs by roughly $885 ($1,869 − $984 = $885) per establishment annually, an amount that will potentially have little effect on small entities. To put this in perspective, the average small and very small establishment slaughters over 21,000 swine annually. Using the American Meat Institute's average pork packer dollars per head margins for 2013–2017, the average small and very small establishment's marginal revenue is $332 thousand (21,858 (heads slaughtered) × $15.20 (average margin per head)). The final rule also provides small and very small establishments with additional time to comply with the new requirements in 9 CFR 310.18(c) and (d). Additionally, the optional NSIS portion of the rule could potentially provide an overall cost savings for the 13 small high-volume establishments of roughly $288,731 per establishment that adopts the NSIS. This estimate takes into consideration the increase in labor cost ($42,025 per establishment), cost associated with meeting RTC standards ($6,300 per establishments) and cost savings from increased industrial efficiency ($337,056 per establishment). See section III for additional details.

## V. Executive Order 13771

Consistent with E.O. 13771 (82 *FR* 9339, February 3, 2017), FSIS estimates that this final rule will yield cost savings. Assuming a 7 percent discount rate, a perpetual time horizon, and a starting year of 2019, the final rule is estimated to yield approximately $51.91 million (2016$) in annual cost savings, not including potential health benefits. Therefore, this rule is an E.O. 13771 deregulatory action.

## VI. 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).

## VII. E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

## VIII. Executive Order 12988, Civil Justice Reform

This rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

## IX. Executive Order 13175

This rule has been reviewed in accordance with the requirements of E.O. 13175, Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with Indian tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule has minimal tribal implications. If an Indian tribe requests consultation, FSIS will work with the OTR to ensure meaningful consultation is provided.

## X. USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA must, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

*How To File a Complaint of Discrimination*

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed on-line at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

## XI. Environmental Impact

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an EA or an EIS unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4 (b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4 (b)(6)).

Establishments that operate under NSIS will be able to slaughter and process swine more efficiently than is possible under current regulations, leading to a reduction in production costs. FSIS expects that consumer demand for pork products will determine the number of swine slaughtered rather than production costs. Because of the efficiencies in the NSIS, the price of pork products may decrease. The predicted price reduction could lead to a slight increase in demand for pork products. With the slight increase in pork product sales, some establishments may choose to increase the number of swine slaughtered, which could result in an increase in the number of condemned carcasses and parts that must be disposed of. However, because the anticipated change in price and sales is very small, especially in comparison to changes in price and sales in response to other market forces, the Agency has determined that the change in the

number of swine slaughtered, as well as the number of condemned carcasses and parts to be disposed of, will be very small and thus will not have a significant individual or cumulative effect on the human environment. Therefore, this regulatory action is appropriately subject to the categorical exclusion from the preparation of an EA or EIS provided under 7 CFR 1b.4(b)(6) of the USDA regulations.

## XII. Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this final rule have been submitted by the Agency to OMB for approval which has not yet been received. FSIS will collect no information associated with this rule until the information collection is approved by OMB.

*Title:* Swine Slaughter Inspection.

*Type of Collection:* New.

*Abstract:* FSIS updated the proposed rule's information collection assessment to reflect the changes made in the final rule in response to public comments and to better align it with the final cost estimates in section III. FSIS is also requiring a new information collection burden but has reduced the total annual burden estimate by 52,729.04 hours. The changes to the final burden estimates incorporate the following factors:

- FSIS is requiring a new information collection burden; specifically, the Agency is requiring market hog slaughter establishments operating under NSIS to maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal.
- The proposed mandatory pre-operational environmental sampling was removed from the final rule. Therefore, these time estimates were removed from the final burden estimates.
- Establishments operating under SIP conduct process control sampling at an alternative frequency. Therefore, these 11 establishments have been removed from the final burden estimates.
- The final burden estimates only include the time to record the sample results for the new process control sampling requirements.
- The final burden estimates were updated so that the establishment and time estimates align with the final cost analysis in section III.

*New Information Collection in This Final Rule*

FSIS is requiring a new regulation that will create a new information collection burden, in that it will require market hog slaughter establishments operating under NSIS to maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal. FSIS has created a form to collect disposition data from establishments. Establishments may provide the same information as requested on the form electronically if it is submitted in a format approved by FSIS. FSIS estimates this new requirement will take establishments operating under NSIS, 5 minutes per shift regardless of whether establishments complete the form or submit the information electronically. This is a new recordkeeping requirement that FSIS has submitted to OMB for approval.

Estimated Annual Recordkeeping Burden for Maintaining Records to Document the Total Number of Animals and Carcasses Sorted and Removed per Day and the Reasons for Their Removal

*Respondents:* Official market hog slaughter establishments that operate under NSIS.

*Estimated maximum number of respondents:* 40.

*Estimated Average Annual Number of Responses per Respondent:* Large establishments 352; small high-volume establishments 290.

*Estimated Maximum Total Potential Annual Responses:* 13,282.

*Estimated Total Annual Recordkeeping Burden:* 1,107 hours.

| Respondents | | Estimated number of respondents | Average annual number of responses per respondent | Total annual responses | Time per response in minutes | Total annual burden hours |
|---|---|---|---|---|---|---|
| Large establishments ..... | Animals and carcasses sorted and removed and their reasons. | 27 | 352 | 9,504 | 5 | 792 |
| Small high-volume establishments. | Animals and carcasses sorted and removed and their reasons. | 13 | 290 | 3,770 | 5 | 314 |
| Total Recordkeeping Burden for sorting and removing. | ..... | 40 | 332 | 13,274 | 5 | 1,106 |

Under this final rule, establishments also will have to maintain written procedures to ensure that animals and carcasses that have been sorted and removed for disposal do not enter the human food supply and are properly disposed of under 9 CFR part 314. The requirement that swine slaughter establishments have written procedures in their HACCP systems is already covered under an approved information collection system, Pathogen Reduction/Hazard Analysis and Critical Control Point Systems (OMB control number 0583–0103). Therefore, this requirement of this final rule will create no new burden on establishments.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250; (202)720–5627.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method 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, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques, or other forms of information technology.

Comments on the proposed information collection may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. To be most effective, comments should be sent within 60 days of the publication date of this final rule.

*Information Collections That Were Included in the Proposed Rule*

Under this final rule, establishments operating under NSIS are required to (1) identify animals or carcasses that establishment personnel have sorted and removed for disposal before FSIS inspection with a unique tag, tattoo, or similar device, and to develop, implement, (2) maintain records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal, and (3) maintain records documenting that products resulting from their slaughter operations meet the new definition of RTC pork product. Furthermore, each establishment operating under the NSIS will also need to submit, on an annual basis, an attestation to the management member of the local FSIS circuit safety committee stating that it maintains a program to monitor and document any work-related conditions of establishment workers.

In addition, each official swine slaughter establishment, regardless of the inspection system under which they operate, will need to maintain, as part of its HACCP system, written procedures for preventing, throughout the entire slaughter and dressing operation, contamination of carcasses and parts by enteric pathogens, and visible fecal material, ingesta, and milk. These procedures must include sampling and analysis for microbial organisms to monitor process control for enteric pathogens, as well as written procedures to prevent visible fecal material, ingesta, and milk contamination.

As mentioned above, the requirement that swine slaughter establishments have written procedures in their HACCP systems is already covered under an approved information collection system. Therefore, this requirement of this final rule will create no new burden on establishments.

The requirement that swine slaughter establishments monitor their systems through microbial testing and recordkeeping will create a new information collection burden. For each sample on which a microbiological test is conducted, there is a ''response'' for the establishment to record the sample result. Under the final rule, large, small and very small high-volume establishments will test and record microbiological results for enteric pathogens, for carcass samples taken at both pre-evisceration and post-chill (for hot-boned products, carcass samples will be collected pre-evisceration and after the final wash), at a frequency of once per 1,000 carcasses; and small and very small low-volume establishments, 13 times a year. The small and very small low-volume establishments do not experience an increase in sampling under the final rule.

*Estimated Annual Recordkeeping Burden:* Swine Slaughter Inspection.

*Respondents:* Official high-volume swine establishments.

*Estimated Number of Respondents:* 74 (17 large, 51 small high-volume, and 6 very small high-volume).

*Estimated Average Annual Number of Responses (samples) per Respondent:* Large establishments 3,869; small high-volume establishments 229; and very small high-volume establishments 52.

*Estimated Total Annual Responses:* 77,764.

*Estimated Total Annual Recordkeeping Burden:* 3,240 hours.

| Respondents | | Estimated number of respondents | Average annual number of responses per respondent | Total annual responses | Time per response in minutes | Total annual burden hours |
|---|---|---|---|---|---|---|
| Large establishments. | Microbial testing data recordkeeping ... | 17 | 3,869 | 65,773 | 2.5 | 2,741 |
| Small high-volume establishments. | Microbial testing data recordkeeping ... | 51 | 229 | 11,679 | 2.5 | 487 |
| Very small high-volume establishments. | Microbial testing data recordkeeping ... | 6 | 52 | 312 | 2.5 | 13 |
| Total Recordkeeping Burden for process control. | ..... | 74 | 1,051 | 77,764 | 2.5 | 3,240 |

FSIS is also requiring that market hog slaughter establishments operating under NSIS submit on an annual basis, an attestation to the management member of the local FSIS circuit safety committee stating that it maintains a program to monitor and document any work-related conditions of establishment workers.

Estimated Annual Reporting Burden for Submitting an Annual Attestation on Work-Related Conditions to the FSIS Circuit. Safety Committee: Swine Slaughter Inspection.

*Respondents:* Official market hog slaughter establishments that operate under NSIS.

*Estimated maximum number of respondents:* 40.

*Estimated Average Annual Number of Responses per Respondent:* Large establishments 1; small high-volume establishments 1.

*Estimated Maximum Total Potential Annual Responses:* 40.

*Estimated Total Annual Recordkeeping Burden:* 1.33 hours.

| Respondents | | Estimated number of respondents | Average annual number of responses per respondent | Total annual responses | Time per response in minutes | Total annual burden hours |
|---|---|---|---|---|---|---|
| Large establishments ..... | Attestation on Work-Related Conditions. | 27 | 1 | 27 | 2 | .90 |
| Small high-volume establishments. | Attestation on Work-Related Conditions. | 13 | 1 | 13 | 2 | .43 |
| Total Reporting Burden | ..... | 40 | 1 | 40 | 2 | 1.33 |

SUMMARY OF BURDEN SWINE SLAUGHTER INSPECTION

[With the recordkeeping burden for maintaining records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal]

| | |
|---|---|
| Total Number Respondents | 84 |
| Average Annual Number Responses per Respondent .. | 1,084.33 |
| Total Annual Responses ..... | 91,084 |
| Average Hours per Response ..... | 0.05 |
| Total Annual Burden Hours .. | 4,347.33 |

SUMMARY OF BURDEN SWINE SLAUGHTER INSPECTION

[Without the recordkeeping burden for maintaining records to document the total number of animals and carcasses sorted and removed per day and the reasons for their removal]

| | |
|---|---|
| Total Number Respondents | 84 |
| Average Annual Number Responses per Respondent .. | 926.24 |
| Total Annual Responses ..... | 77,804 |
| Average Hours per Response ..... | 0.04 |
| Total Annual Burden Hours .. | 3,241.33 |

## XIII. Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

## Final Regulatory Amendments

### List of Subjects

*9 CFR Part 301*

Meat inspection.

*9 CFR Part 309*

Animal diseases, Meat inspection, Reporting and recordkeeping requirements.

*9 CFR Part 310*

Animal diseases, Meat inspection.

For the reasons stated in the preamble, FSIS is amending 9 CFR chapter III as follows:

## PART 301—TERMINOLOGY; ADULTERATION AND MISBRANDING STANDARDS

■ 1. The authority citation for part 301 is revised to read as follows:

**Authority:** 7 U.S.C. 138–138i, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.7, 2.18, 2.53.

■ 2. Amend § 301.2 by adding the definition of ''Ready-to-cook (RTC) pork product'' in alphabetical order to read as follows:

**§ 301.2 Definitions.**

* * * * *

*Ready-to-cook (RTC) pork product.* Any slaughtered pork product sufficiently free from bile, hair, scurf, dirt, hooves, toe nails, claws, bruises, edema, scabs, skin lesions, icterus, foreign material, and odor, which is suitable for cooking without need of further processing.

* * * * *

## PART 309—ANTE–MORTEM INSPECTION

■ 3. The authority citation for part 309 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 4. Add § 309.19 to read as follows:

**§ 309.19 Market hog segregation under the new swine slaughter inspection system.**

(a) The establishment must conduct market hog sorting activities before the animals are presented for ante-mortem inspection. Market hogs exhibiting signs of moribundity, central nervous system disorders, or pyrexia must be disposed of according to paragraph (c) of this section.

(b) The establishment must develop, implement, and maintain written procedures to ensure that market hogs exhibiting signs of moribundity, central nervous system disorders, or pyrexia do not enter the official establishment to be slaughtered. The establishment must incorporate these procedures into its HACCP plan, or sanitation SOPs, or other prerequisite programs.

(c) The establishment must identify livestock that establishment employees have sorted and removed from slaughter with a unique tag, tattoo, or similar device. The establishment must develop, implement, and maintain written procedures to ensure that the animals sorted and removed from slaughter do not enter the human food supply and are disposed of according to 9 CFR part 314.

(d) The establishment must maintain records to document the number of animals disposed of per day because they were removed from slaughter by establishment sorters before ante-mortem inspection by FSIS inspectors and the reasons that the animals were removed. These records are subject to review and evaluation by FSIS personnel.

(e) The establishment must immediately notify FSIS inspectors if the establishment has reason to believe that market hogs may have a notifiable animal disease. Notifiable animal diseases are designated by World Animal Health Organization.

## PART 310—POST-MORTEM INSPECTION

■ 5. The authority citation for part 310 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 6. Amend § 310.1 by revising paragraph (b)(3) to read as follows:

### § 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b) * * *

(3) *Swine inspection.* There are two systems of post-mortem inspection: The New Swine Slaughter Inspection System (NSIS), which may be used for market hogs, and the traditional inspection system, which may be used for all swine.

(i) The NSIS may be used for market hogs if the official establishment requests to use it and meets or agrees to meet the requirements in 9 CFR 309.19 and § 310.26. The Administrator may permit establishments that slaughter classes of swine other than market hogs to use NSIS under a waiver from the provisions in 9 CFR 309.19 and § 310.26 as provided by 9 CFR 303.1(h). The Administrator also may permit establishments that slaughter both market hogs and other classes of swine to slaughter the market hogs under NSIS and slaughter the other classes of swine under traditional inspection.

(ii) Traditional inspection shall be used for swine when NSIS is not used. The following inspection staffing standards are applicable to swine slaughter configurations operating under traditional inspection when NSIS is not used. The inspection standards for all slaughter lines are based upon the observation rather than palpation, at the viscera inspection station, of the spleen, liver, heart, lungs, and mediastinal lymph nodes. In addition, for one- and two-inspector lines under traditional inspection, the standards are based upon the distance walked (in feet) by the inspector between work stations; and for three or more inspector slaughter lines, upon the use of a mirror, as described in § 307.2(m)(6) of this chapter, at the carcass inspection station. Although not required in a one- or two-inspector slaughter configuration, except in certain cases as determined by the inspection service, if a mirror is used, it must comply with the requirements of § 307.2(m)(6).

TABLE 1 TO PARAGRAPH (B)(3)—ONE INSPECTOR—STAFFING STANDARDS FOR SWINE

| Distance walked [1] in feet is— | Maximum inspection rates (head per hour) | | | |
|---|---|---|---|---|
| | Market hogs (heads attached or detached) | | Sows and boars (heads detached) | |
| | Without mirror | With mirror | Without mirror | With mirror |
| 0 to 5 | 140 | 150 | 131 | 143 |
| 6 to 10 | 134 | 144 | 126 | 137 |
| 11 to 15 | 129 | 137 | 122 | 132 |
| 16 to 20 | 124 | 132 | 117 | 127 |
| 21 to 35 | 120 | 127 | 113 | 122 |
| 26 to 30 | 116 | 122 | 110 | 118 |
| 31 to 35 | 112 | 118 | 106 | 114 |
| 36 to 40 | 108 | 114 | 103 | 110 |
| 41 to 45 | 105 | 110 | 100 | 106 |
| 46 to 50 | 101 | 107 | 97 | 103 |
| 51 to 55 | 98 | 103 | 94 | 100 |
| 56 to 60 | 96 | 100 | 91 | 97 |
| 61 to 65 | 93 | 97 | 89 | 94 |
| 66 to 70 | 90 | 95 | 87 | 92 |
| 71 to 75 | 88 | 92 | 85 | 89 |
| 76 to 80 | 86 | 89 | 82 | 87 |
| 81 to 85 | 84 | 87 | 80 | 85 |
| 86 to 90 | 82 | 85 | 79 | 83 |
| 91 to 95 | 80 | 83 | 77 | 81 |
| 96 to 100 | 78 | 81 | 75 | 79 |

[1] Distance walked is the total distance that the inspector will have to walk between work stations during one inspection cycle (*e.g.,* between viscera, carcass, head, and wash-basin).

TABLE 2 TO PARAGRAPH (B)(3)—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS

| Distance walked [1] in feet by inspector B is— | Maximum inspection rates (head per hour with heads attached or detached) | | |
|---|---|---|---|
| | Line configuration | | |
| | Carcass,[2] head viscera [3] | Viscera,[2] head carcass [3] | Head,[2] viscera carcass [3] |
| **Without Mirror** | | | |
| 0 to 5 | 151–253 | 151–271 | 151–296 |
| 6 to 10 | 151–239 | 151–255 | 151–277 |
| 11 to 15 | 151–226 | 151–240 | 151–260 |
| 16 to 20 | 151–214 | 151–227 | 151–244 |
| 21 to 25 | 151–204 | 151–215 | 151–231 |

TABLE 2 TO PARAGRAPH (B)(3)—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS—Continued

| Distance walked[1] in feet by inspector B is— | Maximum inspection rates (head per hour with heads attached or detached) | | |
|---|---|---|---|
| | Line configuration | | |
| | Carcass,[2] head viscera[3] | Viscera,[2] head carcass[3] | Head,[2] viscera carcass[3] |
| **With Mirror** | | | |
| 0 to 5 | 151–253 | 151–303 | 151–318 |
| 6 to 10 | 151–239 | 151–283 | 151–304 |
| 11 to 15 | 151–226 | 151–265 | 151–289 |
| 16 to 20 | 151–214 | 151–249 | 151–270 |
| 21 to 25 | 151–204 | 151–235 | 151–254 |

[1]Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (*e.g.,* between viscera, carcass, and washbasin).
[2]Inspector A.
[3]Inspector B.
Note 1 to Table 2 to paragraph (b)(3): In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

TABLE 3 TO PARAGRAPH (B)(3)—TWO INSPECTORS—STAFFING STANDARDS FOR SOWS AND BOARS

| Distance walked[1] in feet by inspector B is— | Maximum inspection rates (head per hour) | | | |
|---|---|---|---|---|
| | Line Configuration | | | |
| | Carcass,[2] head viscera,[3] heads detached | Viscera,[2] head carcass,[3] heads detached | Head,[2] viscera carcass,[3] heads detached | Head,[2] viscera carcass,[3] heads attached |
| **Without Mirror** | | | | |
| 0 to 5 | 144–248 | 144–254 | 144–267 | 144–267 |
| 6 to 10 | 144–235 | 144–240 | 144–253 | 144–253 |
| 11 to 15 | 144–222 | 144–227 | 144–239 | 144–239 |
| 16 to 20 | 144–211 | 144–215 | 144–226 | 144–226 |
| 21 to 25 | 144–201 | 144–205 | 144–214 | 144–214 |
| **With Mirror** | | | | |
| 0 to 5 | 144–248 | 144–292 | 144–305 | 144–292 |
| 6 to 10 | 144–235 | 144–273 | 144–291 | 144–280 |
| 11 to 15 | 144–222 | 144–256 | 144–272 | 144–268 |
| 16 to 20 | 144–211 | 144–241 | 144–255 | 144–255 |
| 21 to 25 | 144–201 | 144–228 | 144–240 | 144–240 |

[1]Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (*e.g.,* between viscera, carcass, and washbasin).
[2]Inspector A.
[3]Inspector B.
**Note 1 to table 3 to Paragraph (b)(3):** In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

TABLE 4 TO PARAGRAPH (B)(3)—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE

| Maximum inspection rates (head per hour with heads attached) | Number of inspectors by station | | | |
|---|---|---|---|---|
| | Head | Viscera | Carcass | Total |
| Market hogs: | | | | |
| 319 to 506 | 1 | 1 | 1 | 3 |
| 507 to 540 | 1 | 2 | 1 | 4 |
| 541 to 859 | 2 | 2 | 1 | 5 |
| 860 to 1,022 | 2 | 3 | 1 | 6 |
| 1,023 to 1,106 | 3 | 3 | 1 | 7 |
| Sows and boars: | | | | |
| 306 to 439 | 1 | 1 | 1 | 3 |
| 306 to 462[1] | 1 | 1 | 1 | 3 |
| 440 to 475 | 2 | 1 | 1 | 4 |
| 476 to 752 | 2 | 2 | 1 | 5 |
| 753 to 895 | 3 | 2 | 1 | 6 |

TABLE 4 TO PARAGRAPH (B)(3)—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE—Continued

| Maximum inspection rates (head per hour with heads attached) | Number of inspectors by station | | | |
|---|---|---|---|---|
| | Head | Viscera | Carcass | Total |
| 896 to 964 | 3 | 3 | 1 | 7 |

[1]This rate applies if the heads of sows and boars are *detached* from the carcasses at the time of inspection.

**Note 1 to table 4 to paragraph (b)(3):** In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

■ 7. Amend § 310.18 by adding paragraphs (c) and (d) to read as follows:

**§ 310.18 Contamination of carcasses, organs, or other parts.**

* * * * *

(c) Official swine slaughter establishments must develop, implement, and maintain written procedures to prevent contamination of carcasses and parts by enteric pathogens, and visible fecal material, ingesta, and milk contamination throughout the entire slaughter and dressing operation. Establishments must incorporate these procedures into their HACCP plans, or sanitation SOPs, or other prerequisite programs. These procedures must include sampling and analysis for microbial organisms in accordance with the sampling location and frequency requirements in paragraphs (c)(1) and (2) of this section to monitor their ability to maintain process control.

(1) *Sampling locations.* Official swine slaughter establishments, except for very low-volume establishments, must collect and analyze carcass samples for microbial organisms at the pre-evisceration and post-chill points in the process. Establishments that slaughter more than one type of livestock must test the type of livestock slaughtered in the greatest number. Establishments that bone their products before chilling (*i.e.,* hot-boned products) must collect and analyze samples at the pre-evisceration point in the process and after the final wash instead of at post-chill. Very low-volume establishments must collect and analyze samples for microbial organisms at the post-chill point in the process. All swine establishments must sponge or excise tissue from the ham, belly, and jowl areas.

(i) Very low-volume establishments annually slaughter no more than 20,000 swine, or a combination of swine and other livestock not exceeding 6,000 cattle and 20,000 total of all livestock.

(ii) [Reserved]

(2) *Sampling frequency.* Establishments, except for very low-volume establishments as defined in paragraph (c)(1)(i) of this section, must collect and analyze samples at a frequency proportional to the establishment's volume of production at the following rates:

(i) Establishments, except for very low-volume establishments as defined in paragraph (c)(1)(i) of this section, must collect and analyze samples at a frequency of once per 1,000 carcasses, but a minimum of once during each week of operation.

(ii) Very low-volume establishments as defined in paragraph (c)(1)(i) of this section must collect and analyze samples at least once during each week of operation starting June 1 of every year. If, after consecutively collecting 13 weekly samples, very low-volume establishments can demonstrate that they are effectively maintaining process control, they may modify their sampling plans.

(iii) Establishments must maintain accurate records of all test results and retain these records as provided in paragraph (d) of this section.

(d) Official swine slaughter establishments must maintain daily records sufficient to document the implementation and monitoring of the procedures required under this section. Records required by this section may be maintained on computers if the establishment implements appropriate controls to ensure the integrity of the electronic data. Records required by this section must be maintained for at least one year and must be accessible to FSIS.

**§ 310.25 [Amended]**

■ 8. Amend § 310.25 as follows:

■ a. Remove paragraph (a)(2)(ii)(C);

■ b. Remove the undesignated sentence following paragraph (a)(2)(iii)(A);

■ c. Remove ''20,000 swine,'' in paragraph (a)(2)(v)(A);

■ d. In paragraph (a)(5):

■ i. Redesignate Table 1 as Table 1 to paragraph (a)(5); and

■ ii. In newly redesignated Table 1 to paragraph (a)(5), remove the entry for ''swine'';

■ e. In paragraph (b)(1):

■ i. Remove ''in Table 2'' and add ''in Table 1 to this paragraph'' in its place;

■ ii. Redesignate Table 2 as Table 1 to paragraph (b)(1); and

■ iii. In newly redesignated Table 1 to paragraph (b)(1), remove the entries for ''Hogs'' and ''fresh pork sausages'' and footnote (b).

■ 9. Add § 310.26 to read as follows:

**§ 310.26 Establishment responsibilities under the new swine slaughter inspection system.**

(a) *Facilities.* The establishment must comply with the facilities requirements in 9 CFR part 307. The establishment must provide a mirror at the carcass inspection station in accordance with 9 CFR 307.2(m)(6).

(b) *Carcass sorting and disposition.* The establishment must conduct carcass sorting activities and identify any condemnable conditions or defects before carcasses are presented to online inspectors. Establishment sorters must incise mandibular lymph nodes and palpate the viscera to detect the presence of animal diseases as part of their sorting activities. The establishment must develop, implement, and maintain written procedures to ensure that market hog carcasses adulterated with septicemia, toxemia, pyemia, or cysticercosis are properly removed before the point of post-mortem inspection of carcasses. The establishment must incorporate these procedures into its HACCP plan, or sanitation SOPs, or other prerequisite program. These procedures must cover the establishment sorting activities required under this section.

(c) *Line speed limits.* The line speed limits in § 310.1 do not apply to the establishment, provided it is able to maintain effective process control and prevent contamination of carcasses and parts by enteric pathogens and visible fecal material, ingesta, and milk. Establishments operating under the NSIS must reduce their line speed as directed by the Inspector-in-Charge (IIC). The IIC is authorized to direct an establishment to operate at a reduced line speed when in their judgment a carcass-by-carcass inspection cannot be adequately performed within the time available due to the manner in which the carcasses are presented to the online inspector, the health conditions of a particular herd, or factors that may indicate a loss of process control.

(d) *Records.* (1) The establishment must maintain records to document that

the products resulting from its slaughter operation meet the definition of Ready-to-cook pork product in § 301.2. These records are subject to review and evaluation by FSIS personnel.

(2) The establishment must maintain records to document the number of carcasses disposed of per day by establishment sorters before FSIS post-mortem inspection and the reasons that the carcasses were disposed of. These records are subject to review and evaluation by FSIS personnel.

■ 10. Add § 310.27 to read as follows:

**§ 310.27 Attestation requirements.**

Each establishment that participates in the NSIS must submit on an annual basis an attestation to the management member of the local FSIS circuit safety committee stating that it maintains a program to monitor and document any work-related conditions of establishment workers, and that the program includes the following elements:

(a) Policies to encourage early reporting of symptoms of injuries and illnesses, and assurance that it has no policies or programs in place that would discourage the reporting of injuries and illnesses.

(b) Notification to employees of the nature and early symptoms of occupational illnesses and injuries, in a manner and language that workers can understand, including by posting in a conspicuous place or places where notices to employees are customarily posted, a copy of the FSIS/OSHA poster encouraging reporting and describing reportable signs and symptoms.

(c) Monitoring, on a regular and routine basis, injury and illness logs, as well as nurse or medical office logs, workers' compensation data, and any other injury or illness information available.

■ 11. Add § 310.28 to read as follows:

**§ 310.28 Severability.**

Should a court of competent jurisdiction hold any provision of § 310.27 to be invalid, such action will not affect any other provision of 9 CFR part 309 or this part.

Done in Washington, DC.

**Carmen M. Rottenberg,**

*Administrator.*

[FR Doc. 2019–20245 Filed 9–30–19; 8:45 am]

BILLING CODE 3410–DM–P

# FEDERAL REGISTER

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No. 190 October 1, 2019


Part V

## The President

Memorandum of September 24, 2019—Delegation of Functions and Authorities Under the Better Utilization of Investments Leading to Development Act of 2018

Executive Order 13888—Enhancing State and Local Involvement in Refugee Resettlement

Federal Register
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Tuesday, October 1, 2019

# Presidential Documents

**Title 3—**

## The President

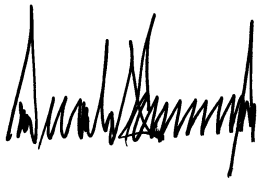
**Memorandum of September 24, 2019**

## Delegation of Functions and Authorities Under the Better Utilization of Investments Leading to Development Act of 2018

**Memorandum for the President of the Overseas Private Investment Corporation [and] the Administrator of the United States Agency for International Development**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1462 of title VI of division F of Public Law 115–254 (section 9682 of title 22, United States Code) (the ''Act''), and section 301 of title 3, United States Code, I hereby delegate to the President of the Overseas Private Investment Corporation, in consultation with the Administrator of the United States Agency for International Development, the functions and authorities vested in the President by the Act to submit a reorganization plan, including any modifications or revisions thereto, and to consult with the appropriate congressional committees on such plan, including any modifications and revisions thereto.

The President of the Overseas Private Investment Corporation is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
*Washington, September 24, 2019*

[FR Doc. 2019–21504
Filed 9–30–19; 11:15 am]
Billing code 3210–01–P

# Presidential Documents

**Executive Order 13888 of September 26, 2019**

## Enhancing State and Local Involvement in Refugee Resettlement

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1**. *Purpose.* In resettling refugees into American communities, it is the policy of the United States to cooperate and consult with State and local governments, to take into account the preferences of State governments, and to provide a pathway for refugees to become self-sufficient. These policies support each other. Close cooperation with State and local governments ensures that refugees are resettled in communities that are eager and equipped to support their successful integration into American society and the labor force.

The Federal Government consults with State and local governments not only to identify the best environments for refugees, but also to be respectful of those communities that may not be able to accommodate refugee resettlement. State and local governments are best positioned to know the resources and capacities they may or may not have available to devote to sustainable resettlement, which maximizes the likelihood refugees placed in the area will become self-sufficient and free from long-term dependence on public assistance. Some States and localities, however, have viewed existing consultation as insufficient, and there is a need for closer coordination and a more clearly defined role for State and local governments in the refugee resettlement process. My Administration seeks to enhance these consultations.

Section 6(d) of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), directed the Secretary of State to determine the extent to which, consistent with applicable law, State and local jurisdictions could have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and to devise a proposal to promote such involvement.

I have consulted with the Secretary of State and determined that, with limited exceptions, the Federal Government, as an exercise of its broad discretion concerning refugee placement accorded to it by the Constitution and the Immigration and Nationality Act, should resettle refugees only in those jurisdictions in which both the State and local governments have consented to receive refugees under the Department of State's Reception and Placement Program (Program).

**Sec. 2**. *Consent of States and Localities to the Placement of Refugees.* (a) Within 90 days of the date of this order, the Secretary of State and the Secretary of Health and Human Services shall develop and implement a process to determine whether the State and locality both consent, in writing, to the resettlement of refugees within the State and locality, before refugees are resettled within that State and locality under the Program. The Secretary of State shall publicly release any written consents of States and localities to resettlement of refugees.

(b) Within 90 days of the date of this order, the Secretary of State and the Secretary of Health and Human Services shall develop and implement a process by which, consistent with 8 U.S.C. 1522(a)(2)(D), the State and the locality's consent to the resettlement of refugees under the Program

is taken into account to the maximum extent consistent with law. In particular, that process shall provide that, if either a State or locality has not provided consent to receive refugees under the Program, then refugees should not be resettled within that State or locality unless the Secretary of State concludes, following consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security, that failing to resettle refugees within that State or locality would be inconsistent with the policies and strategies established under 8 U.S.C. 1522(a)(2)(B) and (C) or other applicable law. If the Secretary of State intends to provide for the resettlement of refugees in a State or locality that has not provided consent, then the Secretary shall notify the President of such decision, along with the reasons for the decision, before proceeding.

(c) Subsection (b) of this section shall not apply to the resettlement of a refugee's spouse or child following to join that refugee pursuant to 8 U.S.C. 1157(c)(2)(A).

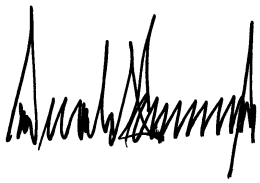
**Sec. 3**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*September 26, 2019.*

[FR Doc. 2019–21505
Filed 9–30–19; 11:15 am]
Billing code 3295–F0–P

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**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List September 30, 2019**

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

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