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Editorial Note: In the printed version of the **Federal Register** Table of Contents for Friday, October 4, 2019, FR Doc. 2019-21414 was incorrectly listed under the Occupational Safety and Health Administration. This document should have appeared under the Occupational Safety and Health Review Commission.

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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Presidential Documents

Title 3—

The President

Executive Order 13890 of October 3, 2019

Protecting and Improving Medicare for Our Nation's Seniors

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.* The proposed Medicare for All Act of 2019, as introduced in the Senate (''Medicare for All'') would destroy our current Medicare program, which enables our Nation's seniors and other vulnerable Americans to receive affordable, high-quality care from providers of their choice. Rather than upend Medicare as we know it, my Administration will protect and improve it.

America's seniors are overwhelmingly satisfied with their Medicare coverage. The vast majority of seniors believe that the program delivers high-quality health outcomes. Medicare empowers seniors to choose their own providers and the type of health insurance that works best for them, whether it is fee-for-service (FFS) Medicare, in which the Federal Government pays for covered services, or Medicare Advantage (MA), in which Medicare dollars are used to purchase qualified private health insurance. ''Medicare for All'' would take away the choices currently available within Medicare and centralize even more power in Washington, harming seniors and other Medicare beneficiaries. Throughout their lives, workers and their employers have contributed their own money to the Medicare Trust Fund. It would be a mistake to eliminate Americans' healthcare choices and to force them into a new system that is effectively a Government takeover of their healthcare.

''Medicare for All'' would not only hurt America's seniors, it would also eliminate health choices for all Americans. Instead of picking the health insurance that best meets their needs, Americans would generally be subject to a single, Government-run system. Private insurance for traditional health services, upon which millions of Americans depend, would be prohibited. States would be hindered from offering the types of insurance that work best for their citizens. The Secretary of Health and Human Services (Secretary) would have the authority to control and approve health expenditures; such a system could create, among other problems, delays for patients in receiving needed care. To pay for this system, the Federal Government would compel Americans to pay more in taxes. No one—neither seniors nor any American—would have the same options to choose their health coverage as they do now.

Instead of ending the current Medicare program and eliminating health choices for all Americans, my Administration will continue to protect and improve Medicare by building on those aspects of the program that work well, including the market-based approaches in the current system. The MA component, for example, delivers efficient and value-based care through choice and private competition, and has improved aspects of the Medicare program that previously failed seniors. The Medicare program shall adopt and implement those market-based recommendations developed pursuant to Executive Order 13813 of October 12, 2017 (Promoting Healthcare Choice and Competition Across the United States), and published in my Administration's report on ''Reforming America's Healthcare System Through Choice and Competition.'' Doing so would help empower patients to select and access the right care, at the right time, in the right place, from the right provider.

Sec. 2. *Policy.* It is the policy of the United States to protect and improve the Medicare program by enhancing its fiscal sustainability through alternative payment methodologies that link payment to value, increase choice, and lower regulatory burdens imposed upon providers.

Sec. 3. *Providing More Plan Choices to Seniors.* (a) Within 1 year of the date of this order, the Secretary shall propose a regulation and implement other administrative actions to enable the Medicare program to provide beneficiaries with more diverse and affordable plan choices. The proposed actions shall:

(i) encourage innovative MA benefit structures and plan designs, including through changes in regulations and guidance that reduce barriers to obtaining Medicare Medical Savings Accounts and that promote innovations in supplemental benefits and telehealth services;

(ii) include a payment model that adjusts supplemental MA benefits to allow Medicare beneficiaries to share more directly in the savings from the program, including through cash or monetary rebates, thus creating more incentives to seek high-value care; and

(iii) ensure that, to the extent permitted by law, FFS Medicare is not advantaged or promoted over MA with respect to its administration.

(b) The Secretary, in consultation with the Chairman of the Council of Economic Advisers, shall submit to the President, through the Assistants to the President for Domestic and Economic Policy, a report within 180 days from the date of this order that identifies approaches to modify Medicare FFS payments to more closely reflect the prices paid for services in MA and the commercial insurance market, to encourage more robust price competition, and otherwise to inject market pricing into Medicare FFS reimbursement.

Sec. 4. *Improving Access Through Network Adequacy.* Within 1 year of the date of this order, the Secretary shall propose a regulation to provide beneficiaries with improved access to providers and plans by adjusting network adequacy requirements for MA plans to account for:

(a) the competitiveness of the health market in the States in which such plans operate, including whether those States maintain certificate-of-need laws or other anti-competitive restrictions on health access; and

(b) the enhanced access to health outcomes made possible through telehealth services or other innovative technologies.

Sec. 5. *Enabling Providers to Spend More Time with Patients.* Within 1 year of the date of this order, the Secretary shall propose reforms to the Medicare program to enable providers to spend more time with patients by:

(a) proposing a regulation that would eliminate burdensome regulatory billing requirements, conditions of participation, supervision requirements, benefit definitions, and all other licensure requirements of the Medicare program that are more stringent than applicable Federal or State laws require and that limit professionals from practicing at the top of their profession;

(b) proposing a regulation that would ensure appropriate reimbursement by Medicare for time spent with patients by both primary and specialist health providers practicing in all types of health professions; and

(c) conducting a comprehensive review of regulatory policies that create disparities in reimbursement between physicians and non-physician practitioners and proposing a regulation that would, to the extent allowed by law, ensure that items and services provided by clinicians, including physicians, physician assistants, and nurse practitioners, are appropriately reimbursed in accordance with the work performed rather than the clinician's occupation.

Sec. 6. *Encouraging Innovation for Patients.* Within 1 year of the date of this order, the Secretary shall propose regulatory and sub-regulatory changes to the Medicare program to encourage innovation for patients by:

(a) streamlining the approval, coverage, and coding process so that innovative products are brought to market faster, and so that such products, including breakthrough medical devices and advances in telehealth services and similar technologies, are appropriately reimbursed and widely available, consistent with the principles of patient safety, market-based policies, and value for patients. This process shall include:

(i) adopting regulations and guidance that minimize and eliminate, as appropriate, the time and steps between approval by the Food and Drug Administration (FDA) and coverage decisions by the Centers for Medicare and Medicaid Services (CMS);

(ii) clarifying the application of coverage standards, including the evidence standards CMS uses in applying its reasonable-and-necessary standard, the standards for deciding appeals of coverage decisions, and the prioritization and timeline for each National Coverage Determination process in light of changes made to local coverage determination processes; and

(iii) identifying challenges to the use of parallel FDA and CMS review and proposing changes to address those challenges; and

(b) modifying the Value-Based Insurance Design payment model to remove any disincentives for MA plans to cover items and services that make use of new technologies that are not covered by FFS Medicare when those items and services can save money and improve the quality of care.

Sec. 7. *Rewarding Care Through Site Neutrality*. The Secretary shall ensure that Medicare payments and policies encourage competition and a diversity of sites for patients to access care.

Sec. 8. *Empowering Patients, Caregivers, and Health Providers.* (a) Within 1 year of the date of this order, the Secretary shall propose a regulation that would provide seniors with better quality care and cost data, improving their ability to make decisions about their healthcare that work best for them and to hold providers and plans accountable.

(b) Within 1 year of the date of this order, the Secretary shall use Medicare claims data to give health providers additional information regarding practice patterns for services that may pose undue risks to patients, and to inform health providers about practice patterns that are outliers or that are outside recommended standards of care.

Sec. 9. *Eliminating Waste, Fraud, and Abuse to Protect Beneficiaries and Taxpayers.* (a) The Secretary shall propose regulatory or sub-regulatory changes to the Medicare program, to take effect by January 1, 2021, and shall propose such changes annually thereafter, to combat fraud, waste, and abuse in the Medicare program. The Secretary shall undertake all appropriate efforts to direct public and private resources toward detecting and preventing fraud, waste, and abuse, including through the use of the latest technologies such as artificial intelligence.

(b) The Secretary shall study and, within 180 days of the date of this order, recommend approaches to transition toward true market-based pricing in the FFS Medicare program. The Secretary shall submit the results of this study to the President through the Assistants to the President for Domestic and Economic Policy. Approaches studied shall include:

(i) shared savings and competitive bidding in FFS Medicare;

(ii) use of MA-negotiated rates to set FFS Medicare rates; and

(iii) novel approaches to information development and sharing that may enable markets to lower cost and improve quality for FFS Medicare beneficiaries.

Sec. 10. *Reducing Obstacles to Improved Patient Care.* Within 1 year of the date of this order, the Secretary shall propose regulatory changes to the Medicare program to reduce the burden on providers and eliminate regulations that create inefficiencies or otherwise undermine patient outcomes.

Sec. 11. *Maximizing Freedom for Medicare Patients and Providers.* (a) Within 180 days of the date of this order, the Secretary, in coordination with the Commissioner of Social Security, shall revise current rules or policies to preserve the Social Security retirement insurance benefits of seniors who choose not to receive benefits under Medicare Part A, and propose other administrative improvements to Medicare enrollment processes for beneficiaries.

(b) Within 1 year of the date of this order, the Secretary shall identify and remove unnecessary barriers to private contracts that allow Medicare beneficiaries to obtain the care of their choice and facilitate the development of market-driven prices.

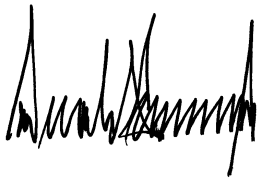
Sec. 12. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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,
October 3, 2019.

[FR Doc. 2019–22073
Filed 10–7–19; 8:45 am]
Billing code 3295–F0–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–19–0035; NOP–18–05]

National Organic Program: USDA Organic Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: 2019 Sunset Review and substance renewals.

SUMMARY: This document announces the renewal of substance exemptions as listed on the National List of Allowed and Prohibited Substances (National List) within the U.S. Department of Agriculture's (USDA) organic regulations. This document reflects the outcome of the 2019 sunset review process and addresses recommendations submitted to the Secretary of Agriculture (Secretary), through the USDA's Agricultural Marketing Service (AMS), by the National Organic Standards Board (NOSB).

DATES: This action is effective October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division, *Telephone:* (202) 720–3252; *Fax:* (202) 260–9151.

SUPPLEMENTARY INFORMATION:

I. Background

USDA AMS administers the National Organic Program (NOP) under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6524). The regulations implementing the NOP, also referred to as the USDA organic regulations (7 CFR part 205), were published on December 21, 2000 (65 FR 80548) and became effective on October 21, 2002. Through these regulations, AMS oversees national organic standards for the production, handling, and labeling of organically produced agricultural products. Since October 2002, the USDA organic regulations have been frequently amended, mostly for changes to the National List in 7 CFR 205.601–205.606.

The National List identifies the synthetic substances allowed to be used and nonsynthetic substances prohibited from use in organic farming. The National List also identifies synthetic and nonsynthetic nonagricultural (nonorganic) agricultural substances that may be used in organic handling. The OFPA and USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless an exemption for using the synthetic substance is provided on the National List. Section 205.105 of the USDA organic regulations also requires that any nonorganic agricultural substance and any nonagricultural substance used in organic handling be listed as allowed on the National List.

The OFPA at § 6578 authorizes the NOSB, operating in accordance with the Federal Advisory Committee Act (§ 1 *et seq.,* 5 U.S.C. App.2), as amended, to assist in evaluating substances to be allowed or prohibited for organic production and handling and to advise the Secretary on the USDA organic regulations. The OFPA sunset provision (§ 6517(e)) also requires a review of all substance exemptions included on the National List within five years of their addition to or renewal on the list. During this sunset review, the NOSB considers any new information pertaining to a substance's impact on human health and the environment, its necessity due to the unavailability of wholly natural substances, and its consistency with organic production and handling. The NOSB subsequently votes to remove a substance allowance or prohibition from the National List.

The Agricultural Improvement Act of 2018 amended the OFPA at § 6518(i)(2) to specify that any vote on a motion proposing to amend the National List requires ⅔ of the votes cast at a meeting of the NOSB at which a quorum is present to prevail. A substance allowance or prohibition remains listed on the National List unless an NOSB motion to remove such substance carries with ⅔ of votes cast, and the Secretary renews or amends the listing for such substance. The NOSB submits its sunset review and recommendations to the Secretary where, as delegated by the Secretary, AMS evaluates the sunset review and recommendations for compliance with the National List substance evaluation criteria in § 6518(m) and other federal statutes or regulations. AMS also considers public comments submitted in association with a specific sunset review process.

AMS published an updated sunset review process in the **Federal Register** on September 16, 2013 (78 FR 56811). In accordance with the sunset review process, AMS published two notices in the **Federal Register** announcing the NOSB meetings on April 19–21, 2017, and October 31–November 2, 2017, and inviting public comments on the 2019 sunset review process (November 25, 2016 (81 FR 85205) and May 30, 2017 (82 FR 24659)). AMS also hosted two public webinars (April 13, 2017 and, October 24 and 26, 2017), to provide additional opportunities for public comment. The NOSB received additional comment during the public meetings. At these public meetings, the NOSB reviewed substance exemptions scheduled to sunset from the National List and recommended these exemptions not be removed. Table 1 shows the current listings for these substance exemptions.

AMS has reviewed and accepted the NOSB's 2019 sunset review recommendations and is renewing the listing of these substance exemptions until 2024.[1] AMS has determined that the substance allowances listed in this notice continue to be necessary for organic production and/or organic handling because of the unavailability of organic forms or wholly natural substitutes for the specified uses (§ 6517(c)(1)(A)(ii)). The renewal of these substance allowances will avoid potential disruptions to the organic industry and consumers that may otherwise result from removal from the National List. AMS also has determined that the nonsynthetic substance prohibitions listed in this notice continue to be necessary because use of the two substances is inconsistent with organic production and/or organic handling (§ 6517(c)(2)(A)(ii)).

Five additional substance allowances were also reviewed and subsequently recommended for renewal by the NOSB:

[1] National List Sunset Dates, NOP 5611, *https://www.ams.usda.gov/sites/default/files/media/NOP-SunsetDates.pdf.*

Micronutrients, § 205.601(j); chlorhexidine, § 205.603(a); lidocaine, § 205.603(b); chlorine materials, § 205.605(b); and potassium acid tartrate, § 205.605(b). These five substance allowances are not included in this renewal notice, because these substances were already amended on the National List as a result of final rules published on December 27, 2018 (83 FR 66559) and on April 30, 2019 (84 FR 18133). The sunset date for micronutrients, § 205.601(j); chlorhexidine, § 205.603(a); lidocaine, § 205.603(b); and chlorine materials, § 205.605(b) is January 28, 2024. The sunset date for potassium acid tartrate, § 205.605(b), is May 30, 2024.

The NOSB also reviewed and subsequently recommended to the Secretary the removal of the listed exemptions for use of vitamin B_1 (§ 205.601), oxytocin (§ 205.603), procaine (§ 205.603), and konjac flour (§ 205.606). AMS is reviewing the NOSB recommendations to remove these substance allowances from the National List. Any removals from the National List would be addressed in a separate notice and comment rulemaking. AMS plans to take action on these substances before their sunset date of March 15, 2022.

Table 1 lists the substance exemptions being renewed through this document. These specific substance allowances and prohibitions continue as listed on the National List with a new sunset date of October 30, 2024.

TABLE 1—NATIONAL LIST SUBSTANCES RENEWED IN 2019 SUNSET REVIEW

Substance	Use conditions
§ 205.601 Synthetic substances allowed for use in organic crop production.	
Chlorine materials: Calcium hypochlorite, Chlorine dioxide, Sodium hypochlorite.	As described under § 205.601(a)(2)(i, ii and iv).
Herbicides, soap-based	As described under § 205.601(b)(1).
Mulches: Biodegradable biobased mulch film	As described under § 205.601(b)(2)(iii).
Boric acid	As described under § 205.601(e)(3).
Sticky traps/barriers	As described under § 205.601(e)(9).
Coppers, fixed	As described under § 205.601(i)(2).
Copper sulfate	As described under § 205.601(i)(3).
Humic acids	As described under § 205.601(j)(3).
Vitamins, C, and E	As described in § 205.601(j)(9).
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.	
Lead salts	As described under § 205.602(d).
Tobacco dust (nicotine sulfate)	As described under § 205.602(j).
§ 205.603 Synthetic substances allowed for use in organic livestock production.	
Chlorine materials: Calcium hypochlorite, Chlorine dioxide, Sodium hypochlorite.	As described under § 205.603(a)(10)(i, ii and iv).
Glucose	As described under § 205.603(a)(13).
Tolazoline (CAS # 59–98–3)	As described under § 205.603(a)(29).
Copper sulfate	As described under § 205.603(b)(1).
§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."	
Attapulgite	As described under § 205.605(a).
Bentonite	As described under § 205.605(a).
Diatomaceous earth	As described under § 205.605(a).
Nitrogen	As described under § 205.605(a).
Sodium carbonate	As described under § 205.605(a).
Acidified sodium chlorite	As described under § 205.605(b).
Carbon dioxide	As described under § 205.605(b).
Magnesium chloride	As described under § 205.605(b).
Sodium phosphates	As described under § 205.605(b).
§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."	
Casings	As described under § 205.606(b).
Pectin	As described under § 205.606(p).

Authority: 7 U.S.C. 6501–6524.

Dated: September 25, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–21171 Filed 10–7–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AI45

[Docket ID FSA–2019–0008]

Agriculture Risk Coverage and Price Loss Coverage Programs; Correction

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: The Commodity Credit Corporation (CCC) is correcting a final rule that was published in the **Federal Register** on September 3, 2019, which revised the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs. That document inadvertently failed to include the relevant counties in Nebraska that have been established as having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice and incorrectly listed the previous Regulation Identifier Number (RIN).

DATES: *Effective:* October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Ann Ball; telephone: (202) 720–4283, email address: *maryann.ball@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice only).

SUPPLEMENTARY INFORMATION:

Correction to Preamble

In the published final rule beginning on page 45877, in the 3rd column, in the **Federal Register** of Monday, September 3, 2019 (84 FR 45877–45895), correct the ''RIN'' heading to read: RIN 0560–AI45.

Correcting Amendment to Regulations

In addition, the final rule inadvertently omitted the list of counties for Nebraska in 7 CFR 1412.46(f). The listing of counties in § 1412.46(f) specifies which counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. The FSA State committees establish the counties as regions within their respective States. During the development of the final rule, the list of counties for Nebraska was intended to be added as: Box Butte, Dawes-North Sioux, Morrill, and Sheridan. Instead, the final rule did not list any counties in Nebraska. This correction adds the list of Nebraska counties.

List of Subjects in 7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

For the reasons discussed above, CCC corrects 7 CFR part 1412 as follows:

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

■ 2. In § 1412.46:

■ a. Revise paragraph (f)(28).

■ b. In paragraph (g), remove the cross-reference ''paragraph (h)'' and add the cross-reference ''paragraph (i)'' in its place.

The revision reads as follows:

§ 1412.46 Planting flexibility.

* * * * *

(f) * * *

(28) *Nebraska.* Box Butte, Dawes-North Sioux, Morrill, and Sheridan.

* * * * *

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2019–21604 Filed 10–7–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2019–0038]

RIN 1557–AE57

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R–1639]

RIN 7100–AF30

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN 3064–AE87

Real Estate Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are adopting a final rule to amend the agencies' regulations requiring appraisals of real estate for certain transactions. The final rule increases the threshold level at or below which appraisals are not required for residential real estate transactions from $250,000 to $400,000. The final rule defines a residential real estate transaction as a real estate-related financial transaction that is secured by a single 1-to-4 family residential property. For residential real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions must obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices. The final rule makes a conforming change to add to the list of exempt transactions those transactions secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act. The final rule requires evaluations for these exempt transactions. The final rule also amends the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.

DATES: This final rule is effective on October 9, 2019, except for the amendments in instructions 4, 5, 9, 10, 14, and 15, which are effective on January 1, 2020.

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Board: Anna Lee Hewko, Associate Director, (202) 530–6260; Virginia Gibbs, Manager, Policy Development Section, (202) 452–2521; Carmen Holly, Lead Financial Institution Policy Analyst, (202) 973–6122, Division of Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272; Matthew Suntag, Counsel, (202) 452–3694; Derald Seid, Counsel, (202) 452–2246; or Trevor Feigleson, Senior Attorney, (202) 452–3274, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

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SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

In December 2018, the agencies invited comment on a notice of proposed rulemaking (proposal or proposed rule) [1] that would amend the agencies' appraisal regulations promulgated pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI).[2] Specifically, the proposal would increase the monetary threshold at or below which financial institutions that are subject to the agencies' appraisal regulations (regulated institutions) would not be required to obtain appraisals in connection with residential real estate transactions (residential real estate appraisal threshold) from $250,000 to $400,000. In addition, the proposal would add to the list of exempt transactions those transactions that are secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) [3] (rural residential appraisal exemption). The proposal would require regulated institutions to obtain evaluations for transactions exempt from the agencies' appraisal requirements due to the increase in the residential real estate appraisal threshold or the rural residential appraisal exemption. Finally, the proposal would amend the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as required under section 1473(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[4]

Title XI directs each Federal financial institutions regulatory agency [5] to publish appraisal regulations for federally related transactions within its jurisdiction. The purpose of Title XI is to protect federal financial and public policy interests [6] in real estate-related transactions by requiring that real estate appraisals used in connection with federally related transactions (Title XI appraisals) be performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.[7]

Title XI directs the agencies to prescribe appropriate standards for Title XI appraisals under the agencies' respective jurisdictions.[8] At a minimum, the statute provides that Title XI appraisals must be: (1) performed in accordance with USPAP; (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.[9]

All federally related transactions must have Title XI appraisals. Title XI defines a federally related transaction as a real estate-related financial transaction [10] that the agencies or a financial institution regulated by the agencies engages in or contracts for, that requires the services of an appraiser under Title XI and the interagency appraisal rules.[11] The agencies have authority to determine those real estate-related

[1] 83 FR 63110 (December 7, 2018).

[2] 12 U.S.C. 3331 *et seq.*

[3] Public Law 115–174, 132 Stat. 1296, Title I, section 103, codified at 12 U.S.C. 3356.

[4] Public Law 111–203, 124 Stat. 1376, codified at 12 U.S.C. 3339(3).

[5] The term ''Federal financial institutions regulatory agencies'' means the Board, the FDIC, the OCC, the National Credit Union Administration (NCUA), and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

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

[7] 12 U.S.C. 3331.

[8] 12 U.S.C. 3339.

[9] The third minimum requirement was added to Title XI by section 1473(e) of the Dodd-Frank Act, as noted *supra,* and is being implemented by this rulemaking. *See infra,* Section II.C.

[10] 12 U.S.C. 3350(5). A real estate-related financial transaction is defined as any transaction that involves: (i) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or financing thereof; (ii) the refinancing of real property or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

[11] 12 U.S.C. 3350(4).

financial transactions that do not require Title XI appraisals.[12] The agencies have exercised this authority by exempting several categories of real estate-related financial transactions from the agencies' appraisal requirement, including transactions at or below certain designated thresholds.[13]

Title XI expressly authorizes the agencies to establish thresholds at or below which Title XI appraisals are not required if: (1) The agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions; and (2) the agencies receive concurrence from the Consumer Financial Protection Bureau (CFPB) that such threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[14] Under the current thresholds, residential real estate transactions [15] with a transaction value [16] of $250,000 or less, certain real estate-secured business loans (qualifying business loans) [17] with a transaction value of $1 million or less, and commercial real estate (CRE) transactions with a transaction value of $500,000 or less do not require Title XI appraisals.[18] The appraisal threshold applicable to residential real estate transactions has not been changed since 1994.[19]

For real estate-related financial transactions at or below the applicable thresholds and for certain existing extensions of credit exempt from the agencies' appraisal requirement,[20] the Title XI appraisal regulations require regulated institutions to obtain an appropriate evaluation of the real property collateral that is consistent with safe and sound banking practices.[21] An evaluation should contain sufficient information and analysis to support the regulated institution's decision to engage in the transaction.[22] The agencies have provided supervisory guidance for conducting evaluations in a safe and sound manner in the *Interagency Appraisal and Evaluation Guidelines* (Guidelines) [23] and the *Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions* (Evaluations Advisory,[24] and together with the Guidelines, Evaluation Guidance).

In 2018, Congress amended Title XI by adding the rural residential appraisal exemption to provide relief for financial institutions engaging in residential real estate transactions in certain rural areas. The exemption provides that residential transactions in certain rural areas do not require Title XI appraisals if the financial institution documents that appraisers are not available for the transaction within reasonable time and cost parameters.[25] The statute does not specifically require that real estate evaluations be performed when financial institutions utilize this exemption.

B. Summary of Proposed Rule

As noted in the proposed rule, residential property values have increased over time, but the appraisal threshold has not been adjusted since 1994. The agencies believe rising market prices of residential properties have contributed to increased burden for regulated institutions and consumers in terms of transaction time and costs, given that the threshold has remained the same since 1994. The proposed rule was intended to reduce regulatory burden consistent with federal financial and public policy interests in residential real estate-related financial transactions. Based on supervisory experience and available data, the agencies published the proposed rule to accomplish these goals without posing a threat to the safety and soundness of financial institutions.

The agencies proposed to increase the threshold level at or below which appraisals are not required for residential real estate transactions from $250,000 to $400,000. Residential real estate transaction would be defined as a real-estate related financial transaction that is secured by a single 1-to-4 family residential property. For residential real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions would be required to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.

The agencies also proposed to make conforming changes to add the rural residential appraisal exemption to the appraisal regulations. The agencies proposed that evaluations be required

[12] Real estate-related financial transactions that the agencies have exempted from the appraisal requirement are not federally related transactions under the agencies' appraisal regulations.

[13] *See* OCC: 12 CFR 34.43(a); Board: 12 CFR 225.63(a); FDIC: 12 CFR 323.3(a). The agencies have determined that these categories of transactions do not require appraisals by state certified or state licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safe and sound banking.

[14] 12 U.S.C. 3341(b).

[15] While the $250,000 threshold explicitly applies to all real estate-related financial transactions with transaction values of $250,000 or less, it effectively only applies to residential real estate transactions because all other real estate-related financial transactions are subject to higher thresholds.

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

[17] Qualifying business loans are business loans that are real estate-related financial transactions and that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment. The Title XI appraisal regulations define ''business loan'' to mean a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity. *See* OCC: 12 CFR 34.42(d); Board: 12 CFR 225.62(d); FDIC: 12 CFR 323.2(d).

[18] *See* OCC: 12 CFR 34.43(a)(1), (5), and (13); Board: 12 CFR 225.63(a)(1), (5), and (14); and FDIC: 12 CFR 323.3(a)(1), (5), and (13).

[19] *See* 59 FR 29482 (June 7, 1994). The OCC, Board, and FDIC had previously set the appraisal threshold at $100,000. OCC: 57 FR 12190–02 (April 9, 1992); Board: 55 FR 27762 (July 5, 1990); FDIC: 57 FR 9043–02 (March 16, 1992).

[20] Transactions that involve an existing extension of credit at the lending institution are exempt from the agencies' appraisal requirement, but are required to have evaluations, provided that there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or there is no advancement of new monies, other than funds necessary to cover reasonable closing costs. *See* OCC: 12 CFR 34.43(a)(7) and (b); Board: 12 CFR 225.63(a)(7) and (b); FDIC: 12 CFR 323.3(a)(7) and (b).

[21] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b). An evaluation is not required when real estate-related financial transactions meet the threshold criteria and also qualify for another exemption from the agencies' appraisal requirement where no evaluation is required by the regulation.

[22] Evaluations are not required to be performed in accordance with USPAP or by state certified or state licensed appraisers by federal law. For additional information on evaluations, *see infra* notes 23 and 24.

[23] The agencies proposed the Guidelines for public comment in 2008, *see* 73 FR 69647 (November 19, 2008), and adopted the final Guidelines in 2010, *see* 75 FR 77450 (December 10, 2010).

[24] Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions (March 4, 2016), OCC Bulletin 2016–8; Board SR Letter 16–5; FDIC FIL–16–2016.

[25] Public Law 115–174, Title I, section 103, codified at 12 U.S.C. 3356. Effective May 24, 2018, section 103 provides that a Title XI appraisal is not required if the real property or interest in real property is located in a rural area, as described in 12 CFR 1026.35(b)(2)(iv)(A), and if the transaction value is $400,000 or less. In addition, the mortgage originator or its agent, directly or indirectly must have contacted not fewer than three state certified or state licensed appraisers, as applicable, on the mortgage originator's approved appraiser list in the market area, in accordance with 12 CFR part 226, not later than three days after the date on which the Closing Disclosure was provided to the consumer and documented that no state certified or state licensed appraiser, as applicable, was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments.

for these transactions. In addition, the agencies proposed to amend the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with USPAP, pursuant to Title XI, as amended by the Dodd-Frank Act.[26] The agencies also proposed several conforming and technical amendments to their appraisal regulations. The agencies invited comment on all aspects of the proposal.

C. Overview of Comments

The agencies collectively received over 560 comments regarding the proposal to increase the residential real estate appraisal threshold that addressed a variety of issues. Comments from financial institutions, financial institution trade associations, and state banking regulators generally supported the proposed increase. Comments from appraisers, appraiser trade organizations, individuals, and consumer advocate groups generally opposed the proposal to increase the threshold. The agencies also received a few comments that are addressed separately below concerning the proposed requirement to obtain evaluations for transactions that qualify for the rural residential appraisal exemption or to subject certain appraisals to appropriate review for compliance with USPAP.[27]

Commenters supporting the proposed threshold increase asserted that an increase would be appropriate given the increases in real estate values since the current threshold was established as well as the cost and time savings to lenders and borrowers that the higher threshold would provide. Supportive commenters also indicated that a threshold increase would provide burden relief for financial institutions without sacrificing safe and sound banking practices. Many of these commenters saw evaluations as appropriate substitutes for appraisals and institutions as having appropriate risk management controls in place to manage the proposed threshold change responsibly. Some commenters in support of the proposal indicated that the proposed threshold increase would benefit consumers, arguing that costs and delays due to appraisals could be reduced. These commenters asserted that expedited valuations could make the residential mortgage market more efficient and lower closing costs.

Commenters opposing an increase to the residential real estate appraisal threshold asserted that the proposal would elevate risks to borrowers, financial institutions, the financial system, and taxpayers. Several commenters asserted that the increased risk would not be justified by burden relief resulting from a threshold increase. As described in more detail below, many commenters in opposition asserted that the proposal would negatively impact consumers. Many of these comments focused on views that evaluations are inadequate substitutes for appraisals.

Many commenters opposing the proposal highlighted the benefits that state licensed or state certified appraisers bring to the real estate valuation process. Commenters asserted that appraisers serve a necessary function in real estate lending and expressed concerns that bypassing them to create a more streamlined valuation process could lead to fraud and another real estate crisis. Many commenters asserted that appraisers are the only unbiased party in the valuation process, in contrast to buyers, agents, lenders, and sellers, who each have an interest in the underlying transactions. Several commenters rejected assertions that there was an appraiser shortage warranting regulatory relief.

Several commenters questioned the proposal in light of the agencies' previous decision not to propose an increase to the residential real estate appraisal threshold during the regulatory review process required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).[28] A few commenters also questioned whether the proposed threshold increase is consistent with Congressional intent, given that the rural residential real estate exemption was made available only to transactions meeting certain criteria, while the proposed threshold increase would exempt all residential transactions at or below $400,000.

II. Revisions to the Title XI Appraisal Regulations

After carefully considering the comments and conducting further analysis, the agencies are adopting the final rule as proposed, and are increasing the residential real estate appraisal threshold from $250,000 to $400,000. As discussed in the proposal and further detailed below, increasing the residential real estate appraisal threshold will provide meaningful regulatory relief for financial institutions without threatening the safety and soundness of financial institutions.

The agencies are authorized to increase the threshold based on express statutory authority to do so upon making a determination in writing that the threshold does not represent a threat to the safety and soundness of financial institutions and receiving concurrence from the CFPB that the threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[29]

As detailed below, the agencies have determined that a residential real estate appraisal threshold of $400,000 will not threaten the safety and soundness of financial institutions and have received concurrence from the CFPB that this threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

The agencies recognize that they decided against proposing a residential appraisal threshold increase during the EGRPRA process. The agencies have reconsidered this decision based on continued comments received from financial institutions and state bank regulatory agencies that increasing the residential appraisal threshold would provide meaningful burden relief, as well as further analysis regarding safety and soundness and consumer protection factors related to the proposal, as detailed below. The agencies also recognize that Congress recently amended Title XI to provide a narrow, self-effectuating appraisal exemption for rural transactions meeting certain requirements. However, the agencies also observe that Congress did not amend the agencies' long-standing authority in Title XI to establish a threshold level at or below which a certified or licensed appraiser is not required to perform an appraisal in connection with federally related transactions. Through the EGRRCPA amendment, Congress mandated that rural transactions meeting specific statutory criteria be exempted from the appraisal regulations; however, there is no indication that Congress intended to restrict the agencies' authority to provide additional exemptions pursuant to their existing statutory authority.

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

[27] The agencies received five comments suggesting that the agencies hold public hearings regarding the proposed rule. The agencies denied these requests on grounds that holding a public hearing would not elicit relevant information that could not be conveyed through the notice and comment process.

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

[29] The agencies note the rural residential appraisal exemption does not require a safety and soundness determination by the agencies or a concurrence by the CFPB. 12 U.S.C. 3341(b).

The agencies are also finalizing as proposed the requirement to obtain an evaluation for transactions that qualify for the rural residential appraisal exemption and the requirement that appraisals for federally related transactions be subject to appropriate review for compliance with USPAP. The final rule also makes several technical and conforming changes to the appraisal regulations. These changes are discussed in more detail below, in the order in which they appear in the rule. The effective date for the rule will be the first day after its publication in the **Federal Register,** other than the evaluation requirement for transactions exempted by the rural residential appraisal exemption and the appraisal review provision, which will become effective on January 1, 2020.

A. Threshold Increase for Residential Real Estate Transactions

1. *Definition of Residential Real Estate Transaction.* The agencies proposed to define a residential real estate transaction as a real estate-related financial transaction secured by a single 1-to-4 family residential property and specifically asked commenters whether the proposed definition is appropriate. The agencies received one comment generally supporting the proposed definition and one comment generally opposing the definition, neither of which included any detail regarding the reasoning for the position. This definition is consistent with current references to appraisals for residential real estate in the agencies' appraisal regulations and in Title XI, and the definition of commercial real estate transaction that was created in the recent rulemaking to increase the appraisal threshold for commercial real estate (CRE) transactions (CRE rulemaking).[30] Adding this definition does not change any substantive requirement, but provides clarity to the regulation.[31] Therefore, the agencies are adopting the definition of a residential real estate transaction as proposed.

2. *Threshold Level.* The agencies proposed increasing the residential real estate appraisal threshold from $250,000 to $400,000. In determining the level of increase, the agencies considered increases in housing prices and general inflation across the economy since the current threshold was established in 1994. The agencies also considered comments received during the EGRPRA process and in response to questions posed about the residential threshold in the CRE rulemaking.[32] As discussed in the proposal, the agencies analyzed the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller Index) [33] and the FHFA Index [34] to determine changes in house prices since 1994. The agencies also analyzed general measures of inflation by reviewing the Consumer Price Index (CPI).[35]

A residential property that sold for $250,000 as of June 30, 1994, would be expected to sell in March 2019 for $643,750 according to the Case-Shiller Index and $621,448 according to the FHFA Index (see Table 1 below). The agencies also considered housing prices over the most recent financial cycle which were generally at a low point in 2011. During the low point of the cycle, in December 2011, a house that sold for $250,000 in 1994 would have been expected to sell for $445,152 in December 2011, according to the Case-Shiller Index and $414,629 according to the FHFA Index.

TABLE 1—HOUSE PRICE AND INFLATION ADJUSTMENTS OF $250,000 AT JUNE 30, 1994, FOR THE CASE-SHILLER INDEX AND THE FHFA INDEX, AND JULY 1, 1994 FOR THE CPI INDEX

Table 1 year	Case-Shiller	FHFA	CPI
1994	250,000	250,000	250,000
2006	578,813	511,636	341,109
2011	445,152	414,629	379,997
2019	643,750	621,448	429,240

The agencies adopted a conservative approach and proposed a threshold of $400,000 to approximate housing prices based on the low point during the most recent cycle. The proposed threshold level is also consistent with general measures of inflation across the economy reflected in the CPI since 1994. The agencies invited comment on the proposed level for the residential real estate appraisal threshold.

The agencies received a number of comments agreeing that the proposed threshold level would be justified by changes in real estate prices, inflation, and the data presented by the agencies in the proposal. Other commenters supporting a threshold increase supported a higher threshold, such as $500,000. These commenters generally asserted that doing so would be more consistent with the data presented. Some commenters also cited consistency with the CRE appraisal threshold as a justification for increasing the residential real estate threshold to $500,000. One commenter supporting a higher threshold questioned why the agencies did not adjust from the lowest point in the most recent cycle to account for price appreciation up to a more recent date, as was done in the CRE rulemaking. Several commenters supportive of increasing the threshold recommended that the agencies either commit to adjusting the threshold periodically, or automatically adjust the threshold periodically, to reflect changes in housing values, market conditions or inflation.

Some commenters opposing the increase asserted that inflationary changes are inadequate justifications for increasing the appraisal threshold. Some opposing commenters suggested the agencies should either maintain the current $250,000 threshold or lower the threshold, with suggested ranges from $100,000 or under to $275,000. Some commenters suggested eliminating the residential appraisal threshold exemption entirely and requiring appraisals for all residential real estate transactions. A few commenters suggested lower thresholds and that transactions under the current and proposed thresholds often pose risk to financial institutions and to consumers. Some of these commenters asserted that many transactions involving defaults or foreclosures are transactions below $400,000.

Some commenters asserted that the threshold should vary based on market values in specific geographic areas, and that a national threshold level is inappropriate given differences in property values across the country. Some commenters suggested doing so by basing the threshold on the GSE conforming loan limits for specific geographic areas. Several commenters asserted that inflationary measures such as the CPI are inappropriate measures

[30] 83 FR 15019–01 (April 9, 2018) (''commercial real estate transaction'' is defined as a ''real estate-related financial transaction that is not secured by a single 1-to-4 family residential property'').

[31] The agencies believe that federally related transactions secured by single 1-to-4 family residential properties are currently the only real estate transactions subject to the $250,000 appraisal threshold.

[32] 82 FR 35478, 35482 (July 31, 2017); 83 FR at 15029–15030.

[33] The Case-Shiller Index reflects changes in home prices from a base of $250,000 in June 1994, based on the Standard & Poor's Case-Shiller Home Price Index. *See* Standard & Poor's CoreLogic Case-Shiller Home Price Indices, *available at https://us.spindices.com/index-family/real-estate/sp-corelogic-case-shiller.*

[34] The FHFA Index reflects changes in home prices from a base of $250,000 in June 1994, based on the FHFA House Price Index. *See* FHFA House Price Index, *available at https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx.*

[35] The CPI, which is published by the Bureau of Labor Statistics, is a measure of the average change over time in the prices paid by urban consumers for a market basket of goods and services. *See https://www.bls.gov/cpi/.*

on which to base the threshold because they are not accurate indicators of housing prices. One of these commenters suggested that the threshold be based on wage growth and housing affordability. Two commenters asserted that adjusting the $250,000 threshold based on changes in prices would be inappropriate because that level was not itself the result of an inflation adjustment and was either arbitrary or improper.

After carefully considering the comments received, and for the reasons discussed previously, the agencies have decided to increase the residential real estate appraisal threshold to $400,000, as proposed. Increasing the appraisal threshold for residential real estate transactions to $400,000 approximates more recent house prices and provides an inflation adjustment to a threshold that has not been increased since 1994. The agencies based the beginning point for this analysis on $250,000 because, as discussed below, supervisory experience with the $250,000 threshold indicates that this threshold level did not threaten the safety and soundness of financial institutions.

The agencies acknowledge that the data presented indicates that a house sold in 1994 would sell for higher than $400,000 today; however, the agencies believe the more conservative approach is appropriate. Setting the threshold level to the low point of the most recent cycle takes into consideration potential price fluctuations to which financial institutions that engage in residential real estate lending could be exposed. This approach also considers that a high percentage of residential real estate transactions is already captured by the existing residential real estate threshold, as reflected below in Table 2.

The agencies also concluded that automatic adjustments to the threshold or agency commitments to set timetables for future threshold increases would not be appropriate. The agencies already periodically review their regulations to identify outdated or unnecessary regulatory requirements, such as through the EGRPRA process, and can consider any comments concerning the thresholds through that process. In addition, the agencies are required by Title XI to weigh safety and soundness implications regarding any proposed threshold increase and obtain CFPB concurrence. The other alternative proposals suggested, such as varying the threshold based on local housing prices or wages, would add unnecessary regulatory burden and complexity by introducing numerous threshold levels across the country.

3. *Safety and Soundness Considerations for Raising the Residential Real Estate. Threshold.* Under Title XI, the agencies may set a threshold at or below which a Title XI appraisal is not required if they determine in writing that such a threshold level does not pose a threat to the safety and soundness of financial institutions.[36] In the proposal, the agencies preliminarily determined that the proposed threshold level for residential real estate transactions would not pose a threat to the safety and soundness of financial institutions. The preliminary determination was based on supervisory experience regarding causes of losses at financial institutions, analysis of available Home Mortgage Disclosure Act (HMDA) data, and the fact that evaluations would be required for transactions below the proposed threshold.[37] The agencies invited comment on their preliminary finding that the proposed threshold would not pose a threat to the safety and soundness of financial institutions, as well as the data used to support the finding. After taking into account the comments, discussed below, and analyzing a range of data and information, the agencies have determined that the threshold level of $400,000 for residential real estate transactions does not represent a threat to the safety and soundness of financial institutions.

Agency staff used HMDA data to estimate the number and dollar volume of institutions' residential real estate transactions that would be affected by the increased threshold. Table 2 below shows the number and dollar volume of transactions in 2017 that: (i) Would have been exempted under the current threshold; (ii) would be newly exempted under the proposed threshold increase; (iii) in total would be exempted as a result of the proposed threshold increase; and (iv) would not be exempted following the proposed threshold increase. The data are limited to first-lien, single-family mortgage originations[38] on residential properties by FDIC-insured institutions and affiliated institutions that are not sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency (''regulated transactions'').[39]

TABLE 2—2017 HMDA[40]

Regulated transactions by transaction amount	Exempted by current threshold of $250,000	Newly exempted by proposed increase to $400,000	Total exempted by proposed increase to $400,000	Total not exempted by proposed increase to $400,000
Number of Transactions	750,000	214,000	965,000	379,000
% of Total	56%	16%	72%	28%
Dollar Volume ($billions)	96	68	164	305
% of Total	20%	14%	35%	65%

The 2017 HMDA data suggests that the $250,000 threshold currently exempts approximately 20 percent of the total dollar volume of regulated transactions. Raising the threshold to $400,000 will exempt an additional estimated 14 percent of the dollar volume, thus increasing the share of the dollar volume of regulated transactions that are exempt to approximately 35 percent.

The agencies reviewed HMDA data to measure the percent of regulated transactions exempted in 1994 when the

[36] 12 U.S.C. 3341(b).

[37] 83 FR at 63116–63119.

[38] Single-family properties include 1-to-4 family and manufactured housing property types.

[39] Transactions originated by regulated institutions but sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency are separately exempted from the agencies' appraisal requirement. *See* OCC: 12 CFR 34.43(a)(9); Board: 12 CFR 225.63(a)(9); FDIC: 12 CFR 323.3(a)(9). As described in the proposal, the 214,000 additional exempted transactions represent only three percent of total HMDA originations in 2017 and, as also reflected in Table 2, 16 percent of regulated transactions.

[40] Numbers and dollar volumes are based on 2017 HMDA data. Originations with loan amounts greater than $20 million are excluded. Subtotals may not add to totals due to rounding.

threshold was raised from $100,000 to $250,000 as compared to raising the threshold from $250,000 to $400,000. The data show that increasing the threshold from $100,000 to $250,000 in 1994 resulted in an estimated 77 percent of the total dollar volume of regulated transactions being exempt.[41] By comparison, as referenced above in Table 2, 2017 HMDA data indicates that increasing the threshold from $250,000 to $400,000 will result in an estimated 35 percent of the total dollar volume of regulated transactions being exempt. As stated in the proposal, the threshold increase will exempt a much smaller percentage of regulated transactions by dollar volume.

In the proposal, the agencies requested comment on whether the proposed level of $400,000 for the threshold would be appropriate from a safety and soundness perspective, and on what sources of data would be appropriate for the safety and soundness analysis. In general, commenters who supported the proposed increase in the threshold viewed the data presented in the proposed rule as supporting the increase, while commenters opposed to the increase found the data insufficient.

A number of commenters noted that the scope of the threshold had decreased significantly since it was established in 1994 due to inflation in home values. As such, they argued that an increase in the threshold would be justified to align the threshold with its 1994 scope. Other commenters expressed concern that the proposed threshold level would exempt too high a percentage of residential transactions from the protections provided by appraisals. These commenters focused on the percentage of residential transactions that would be affected, either on a national basis or based on specific geographic areas. Many such commenters cited data indicating that the proposed threshold of $400,000 is well above median home prices nationally and would exempt a large majority of residential transactions in specific areas. One commenter indicated that only 17 metropolitan statistical areas have a median sales price for single-family homes that exceeds $400,000. Several commenters cited to sources of data that indicated lower median home prices than the sources cited in the proposal.

A number of commenters requested that the agencies conduct alternative analyses and pointed out that the agencies did not analyze the local or regional markets affected by the increase nor the impact on particular borrowers or communities. Some commenters called for further study of home prices by region and metro area and for the agencies to show which markets would be most affected by the threshold increase. In particular, commenters requested that the agencies analyze the effect of the proposed increase in the threshold in dynamic markets and compare its effect in urban versus rural areas. One commenter indicated that HMDA data are the wrong source of information for evaluating the impact of the threshold on rural areas, given that certain low volume originators in rural areas are not required to report HMDA data.

Based on the agencies' supervisory experience and analysis, as discussed in more detail below, the current threshold has not negatively impacted safety and soundness, and the agencies do not believe raising the threshold to $400,000 will present a safety and soundness concern. Although several commenters were concerned that the agencies had not analyzed the effects on local markets or particular communities, the agencies' supervisory experience with the current threshold since 1994 suggests that this incremental increase will not negatively affect safety and soundness on the local or national level based on loss rates for residential real estate loans as discussed below and observations during examinations.

Moreover, the 2017 HMDA data also suggests that, though the impact on the total dollar volume of exempted transactions would be somewhat limited, the number of exempted transactions would increase materially and provide cost savings and regulatory burden relief for financial institutions. As shown in table 2 above, the agencies estimate that the increase would exempt an additional 214,000 transactions and thus raise the share of the number of regulated transactions that would be exempt from 56 percent to 72 percent. This analysis of the 2017 HMDA data indicates that the increased threshold will affect a low aggregate dollar volume but a material number of transactions, suggesting the potential for financial savings and burden relief with limited additional risk.[42]

Further, as covered in the proposal, the 2017 HMDA data show that the rule would provide significant burden relief in rural areas. The agencies estimate that increasing the appraisal threshold to $400,000 would potentially increase the share of exempted transactions from 82 percent to 91 percent of the number, and from 43 percent to 58 percent of the dollar volume, of regulated transactions that were secured by residential property located in a rural area.[43]

a. *Use of Evaluations.* The Title XI appraisal regulations require regulated institutions to obtain evaluations for several categories of real estate-related financial transactions that the agencies have determined do not require a Title XI appraisal, including transactions at or below the current thresholds.[44] Accordingly, the agencies proposed to require that regulated institutions entering into residential real estate transactions at or below the proposed residential real estate appraisal threshold obtain evaluations that are consistent with safe and sound banking practices unless the institution chooses to obtain an appraisal for such transactions. The agencies requested comment on use of evaluations instead of appraisals for residential real estate transactions.

In general, commenters who supported the increase in the threshold

[41] In both the 1994 and 2017 HMDA analyses, the agencies excluded transactions originated by nonbanks or transactions sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency because those transactions are already subject to other exemptions in the appraisal regulations. When discussing the impact of the threshold increase from $100,000 to $250,000, the preamble to the 1994 rule noted that information from the National Association of Realtors, the Census Bureau, and the Department of Housing and Urban Development indicated that 85 percent of the dollar volume of mortgages financing new homes and 82 percent of the volume of mortgages financing purchases of existing homes would fall below the $250,000 threshold. *See* 59 FR at 29486. The agencies reviewed the data used in 1994 and determined that the information reviewed by the agencies did not appear to exclude transactions originated by nonbanks or transactions sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency, thus, necessitating the additional analysis.

[42] As noted above, in estimating the impact of the threshold increase on institutions, the agencies attempted to exclude from the HMDA data analysis residential transactions that were already exempt from the appraisal regulations, including those sold to the GSEs. The agencies recognize that the analysis may not have excluded all GSE-related transactions exempted from the appraisal regulations, as the regulations exempt not just transactions sold to the GSEs, but all transactions that qualify for sale to a GSE or U.S. government agency. OCC: 12 CFR 34.43(a)(10)(i); Board: 12 CFR 225.63(a)(10)(i); FDIC: 12 CFR 323.3(a)(10)(i). The agencies do not currently have the ability to accurately determine which transactions not sold to a GSE or U.S. government agency actually qualified for sale. Even assuming that a number of transactions fall into this category, the agencies believe the threshold increase will produce burden relief for regulated institutions.

[43] For the purposes of the HMDA analysis, a property is considered to be located in a ''rural'' area if it is in a county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, based on 2013 Urban Influence Codes (UIC) published by the United States Department of Agriculture. Any loans from Census tracts that are missing geographical identifiers or undefined in the 2013 UIC have been excluded from the analysis of burden relief in rural areas.

[44] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

also viewed evaluations as providing sufficient valuation information and analysis for financial institutions and consumers to engage in safe and sound residential real estate transactions. Those opposed to the increase in the threshold generally argued that evaluations would not provide enough support for these transactions and would pose a threat to financial institutions and consumers.

Commenters in support of the proposal asserted that there would be little impact to safety and soundness by relying on evaluations instead of appraisals. Some financial institutions commented that they had found evaluations to generally contain sufficient information and analysis to be the basis for lending decisions. Several commenters noted that financial institutions are only allowed to use evaluations when doing so is consistent with safety and soundness and that the institution always retains the discretion to seek an appraisal. Some of these commenters also asserted that they have adequate programs and policies to ensure that evaluations are used prudently.

Many commenters opined that appraisals are more accurate and reliable sources of valuation information than evaluations because they are done by professionals with strict training requirements and who are subject to state credentialing and disciplinary review for poor quality work. In contrast, commenters noted there are no standardized requirements for those who perform evaluations. Commenters also noted that appraisals are required to follow established requirements as provided by USPAP, which guarantees a certain level of information and quality, whereas evaluations lack standard requirements for information or structure. Some of these commenters expressed particular concern about homes in rural areas that tend to have unusual features or fewer comparable properties and thus are harder to value. Some commenters also raised concerns about the use of evaluations on homes that may need repairs, suggesting that evaluations may not uncover these issues.

Many commenters argued that appraisers are the only independent third party in a real estate transaction and that only appraisers' opinions are independent and unbiased. These commenters represented that those who perform evaluations often do not have the same level of independence from the transaction. Some commenters asserted that appraisals provide more accuracy than evaluations because they include a physical inspection of the property. In contrast, some commenters who were providers of evaluation services indicated that they typically include a physical inspection of the property in their product. A few commenters suggested that evaluations are subject to less regulatory scrutiny than appraisals.

Commenters also opined about the use of automated valuation models (AVMs) in the performance of evaluations. Many commenters felt that AVMs are unreliable and expressed concern that raising the threshold could lead to greater reliance on AVMs. Some of these commenters asserted that it would be inappropriate for the agencies to expand the residential real estate transaction threshold before issuing quality control standards for AVMs, as required by Title XI.[45] In contrast, some commenters believed that AVMs could provide valuable information, and that improvements in technology and greater availability of information has improved the quality of evaluations. One commenter indicated that AVMs are more predictive of default than appraisals. Another indicated that evaluations based on AVMs are generally more objective than appraisals because they are not skewed by knowledge of the contract price.

The agencies are adopting this aspect of the final rule without change. As is the case currently for transactions under the threshold exemptions, evaluations will be required for transactions exempted by the new threshold that do not receive appraisals.[46] Although the agencies recognize, as many commenters noted, that evaluations are not subject to the same uniform standards as appraisals in terms of structure and content or the preparer's training and credentialing requirements, evaluations must be consistent with safe and sound banking practices.[47] The agencies have provided the Evaluation Guidance to assist institutions in complying with this requirement.[48] The Evaluation Guidance provides information to help ensure that evaluations provide a credible estimate of the market value of the property pledged as collateral for the loan. For instance, the Evaluation Guidance states that, generally, evaluations should be performed by persons who are competent, independent of the transaction, and have the relevant experience and knowledge of the market, location, and type of real property being valued.

Although some commenters expressed concern that raising the threshold would cause financial institutions to feel pressured to use evaluations whenever possible in order to remain competitive, data analyzed by the agencies suggests that financial institutions are generally using caution when determining when evaluations are suitable for a given transaction. A five-year review of supervisory information on the use of appraisals and evaluations by large financial institutions found larger lenders obtained appraisals on 74 percent of portfolio residential real estate originations at or below the current $250,000 threshold.[49] These data suggest that financial institutions are often exercising discretion in determining when to use evaluations and are not automatically using evaluations whenever permitted.

Further, individuals performing evaluations are expected to be independent of the transaction. The agencies note that many evaluations of residential properties that are a consumer's principal dwelling are covered by the valuation independence requirements of section 1472 of the Dodd-Frank Act and its implementing regulation.[50] Among other requirements, this regulation prohibits conflicts of interest and coercion in the preparation of any opinion of value and prohibits preparers of opinions of value from materially misrepresenting the value of the property.[51] In addition, the agencies have issued guidance to help institutions ensure that they have the proper controls to fulfill independence expectations.[52]

Regarding concerns about AVM use, the agencies note that, while financial institutions may use AVMs in preparing evaluations, any evaluation in which they are used must be consistent with safe and sound practices. The agencies have published guidance to help ensure that financial institutions' use of AVMs is consistent with this requirement.[53]

[45] 12 U.S.C. 3354(b).

[46] An evaluation is not necessary if the transaction qualifies both for the new threshold and for another exemption that does not require an evaluation.

[47] OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

[48] *See supra* notes 23 and 24. *See also* Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines (October 16, 2018), OCC Bulletin 2018–39; Board SR Letter 18–9; FDIC FIL–62–2018.

[49] Y–14 data. Bank holding companies and intermediate holding companies with $50 billion or more in total consolidated assets are required to submit a quarterly *Capital Assessments and Stress Testing* (FR Y–14M) reports and schedules, which collect granular data on institutions' various asset classes, including residential real estate loans.

[50] 15 U.S.C. 1631; 12 CFR 226.42.

[51] 12 CFR 226.42.

[52] Guidelines, Section V.

[53] *See* Supervisory Guidance on Model Risk Management (April 4, 2011), OCC Bulletin 2011–12; Board SR Letter 11–7; FDIC FIL–22–2017 (adopted by the FDIC in 2017 with technical and conforming

b. *Analysis of Loss Rates.* When considering the threshold increase's potential impact on safety and soundness, the agencies considered a loss analysis of aggregate net charge-off rates for residential real estate loans after the last increase in the appraisal threshold in 1994. The agencies' analysis of the charge-off rates offered no evidence that increasing the appraisal threshold to $400,000 for residential real estate transactions would materially increase the risk of loss to financial institutions. The agencies requested comment on this analysis of the charge-off data.

Several commenters noted that the agencies' loss analysis did not reflect any significant change in the loss history for residential real estate transactions after the threshold was increased from $100,000 to $250,000 in 1994. Other commenters requested alternative analyses of charge-off rates, specifically data on foreclosures and losses based on loan amount, as opposed to aggregate net charge-off data. These commenters asserted that the aggregate data could include loans not eligible for the exemption or loans exempted on other grounds. A few commenters recommended that the agencies compare loan-level foreclosure rates for their use of appraisals and evaluations to determine if a correlation exists between the use of evaluations and foreclosures.

As noted in the proposal, a historical review of loss data demonstrates that the net charge-off rate for residential real estate transactions did not increase after the appraisal threshold was raised from $100,000 to $250,000 in June 1994, indicating the 1994 threshold increase did not have a negative impact on the safety and soundness of regulated institutions. The historical loss information in the Reports of Condition and Income (Call Reports) also shows that the net charge-off rate for residential real estate transactions remained relatively unchanged after the increase in the threshold in 1994 through year-end 2007. While the net charge-off rate for residential real estate transactions escalated significantly from 2008 through 2013 during the financial crisis, the agencies primarily attribute this to weak underwriting standards in the lead up to the crisis.

Based on the net charge-off data, which suggest that the increase in the appraisal threshold in 1994 did not have a material effect on the loss experience associated with residential real estate loans, the agencies believe the increase to $400,000 will not lead to increases in charge-off rates.

c. *Supervisory Experience.* In addition to analyzing net charge-off rates for residential real estate transactions, the agencies also considered their own supervisory experience with appraisals and evaluations. The agencies' experience in supervising appraisal and evaluation programs and practices since the enactment of FIRREA indicates that increasing the threshold would not threaten the safety and soundness of financial institutions. The agencies have found that both appraisals and evaluations prepared properly can be credible tools to support real estate lending decisions.

As part of the agencies' consideration of the safety and soundness implications of the proposed threshold increased, the agencies reviewed safety and soundness Reports of Examination. Regarding examination experience, the agencies reviewed Reports of Examination of their respective supervised institutions from January 2017 to December 2018 for examiner findings regarding appraisals and evaluations.[54] Both appraisals and evaluations were cited in examiner findings, however, the overall amount and nature of valuation-related examination findings support a conclusion that the proposed threshold increase would not threaten the safety and soundness of financial institutions.

The agencies have a long history with evaluations as an alternative valuation tool. The agencies have implemented examination procedures to frame their review of an institution's valuation practices and the sufficiency of the supporting information in evaluations, as appropriate for the size and nature of the institution's residential real estate lending activities. The agencies have used these procedures to assess the use of evaluations and ensure that they are prepared according to safety and soundness principles and will continue to examine institutions' evaluation policies and practices. The fact that evaluations, which will continue to be subject to supervisory oversight, will be required for transactions at or below the increased threshold supports the conclusion that increasing the residential real estate appraisal threshold to $400,000 will not pose a threat to safety and soundness.

d. *Additional Protections.* In proposing to raise the residential real estate appraisal threshold, the agencies noted that institutions may elect to obtain appraisals for transactions that fall under the threshold, even though an evaluation would also be permitted. In the supervisory experience of the agencies, a financial institution may choose to obtain appraisals for exempt transactions based on the risks associated with a particular transaction or to preserve the flexibility to sell residential loans in the secondary market. The agencies requested comment on the question of whether and when institutions use appraisals even if not required to do so by the appraisal regulations.

Several commenters indicated that institutions follow risk-based internal policies to determine whether to obtain an appraisal, including for transactions that fall under one of the exemptions from the appraisal regulations. One commenter provided survey data suggesting that the majority of lenders in one state often obtain appraisals for loans that fall below the current threshold. On the other hand, some commenters asserted that lenders would feel competitive pressure to use more evaluations if the threshold were raised and that the agencies lacked data on how often lenders use evaluations when permitted.

The agencies expect regulated institutions to continue using a risk-focused approach when considering whether to order an appraisal for transactions that fall below the threshold. The Guidelines encourage institutions to establish appropriate policies and procedures for determining when to obtain an appraisal in connection with transactions for which an evaluation is permitted.[55] Similarly, the Evaluations Advisory suggests it would be prudent to obtain an appraisal rather than an evaluation when an institution's portfolio risk increases or for higher-risk transactions.[56] As detailed above, data reviewed by the agencies found that lenders often choose to obtain appraisals, even when evaluations are permitted for transactions at or below the current $250,000 threshold.

In addition to the additional safety and soundness protection provided by the risk-based approach to valuations, the agencies note that each agency has the ability under the appraisal

changes)); Guidelines, Appendix B. The agencies note that many commenters suggested that appraisers, unlike those who perform evaluations, cannot be employees of the financial institution making the loan. However, appraisers are permitted to be employees of the lender provided that the independence requirements in the agencies' rules are met. OCC: 12 CFR 34.45(a); Board: 12 CFR 225.65(a); FDIC: 12 CFR 323.5(a).

[54] The Reports of Examination data reviewed related to both commercial and residential real estate lending valuations and valuation programs of supervised institutions.

[55] Guidelines, Section XI.

[56] Evaluations Advisory at 2.

regulations to require an appraisal whenever it is necessary to address safety and soundness concerns.[57] This authority allows the agencies to require appraisals for exempt transactions, for example, where an institution demonstrates weakness in the safe and sound use of evaluations for exempt transactions.

4. *Consumer Protection Considerations.* In proposing the increase in the appraisal threshold for residential transactions, the agencies noted that evaluations can provide consumer protections. The agencies noted that evaluations have long been required for below-threshold transactions; must be consistent with safe and sound banking practices; [58] and should contain sufficient information and analysis to support the decision to engage in the transaction,[59] although they may be less structured than appraisals. In the proposal, the agencies also highlighted that the Guidelines and the Evaluations Advisory [60] provide that individuals preparing evaluations should be qualified, competent, and independent of the transaction and the loan production function of the institution.[61] For these reasons, the agencies posited that evaluations could provide a level of consumer protection for transactions at or below the proposed appraisal threshold.

The agencies requested comment generally regarding any implications of the proposed rule on consumer protection. In addition, the agencies asked commenters for specific information about the potential cost and time savings to consumers that may result from the increased use of evaluations versus appraisals and whether information in evaluations would be sufficiently clear to enable the consumer to make an informed decision. The agencies also requested comment on the availability of valuation information to consumers through public sources and whether information from those sources help provide consumers with additional protection in residential transactions. Finally, the agencies requested comment on challenges, if any, that financial institutions may have in meeting the requirements and standards for independence for evaluations prepared by internal staff or external third parties.

In general, commenters that supported the proposed threshold and commented on consumer protection issues indicated that evaluations provide consumers with sufficient protection in a residential real estate transaction. Many commenters who opposed the increased threshold indicated that evaluations are inadequate substitutes for appraisals and therefore an increased threshold would pose a threat to consumer protection.

Many commenters opposed to an increase in the threshold argued that appraisers are the only objective and unbiased party in a transaction and bring checks, balances, and oversight to the mortgage lending process. Some of these commenters based this assertion on the legal requirement for appraiser independence and the professional standards to which appraisers are held. These commenters also argued that individuals preparing evaluations are often not disinterested third parties because they are employed by the lender. Several commenters asserted that evaluations are usually performed by individuals who, unlike appraisers, are not credentialed valuation professionals subject to standardized training and experience requirements.

A number of commenters suggested that inadequate property valuations and undue influence on appraisers contributed to property overvaluation during the most recent financial crisis, with adverse impacts for consumers. They indicated that the Dodd-Frank Act strengthened protections regarding appraisals, including federal oversight provisions, and that a number of these protections do not apply to evaluations that are not conducted by appraisers. On the other hand, commenters who supported the proposed increase in the threshold argued that evaluations are a safe alternative to appraisals, with some noting that individuals who prepare evaluations are also required to be independent under federal law, as discussed further below.

Many commenters who opposed a threshold increase on consumer protection grounds asserted that evaluations are not subject to uniform standards and are not a meaningful substitute for an appraisal that must be conducted in compliance with USPAP. A number of commenters questioned the reliability of valuation methods other than appraisals, particularly AVMs and evaluations. Other commenters suggested that the proposal would cause consumers to lose the benefit of appraisers performing a physical inspection and an analysis of specific property features, including property maintenance and repair issues that can affect the property value.

Some commenters in favor of a threshold increase asserted that evaluations protect consumers by helping to ensure the property's value supports the purchase price. In this regard, one commenter indicated that evaluations must be consistent with safe and sound banking practices and, according to agency guidelines, they should provide supporting information and an estimate of market value. One commenter in favor of a threshold increase raised concerns that appraisals may provide a false sense of protection to consumers who incorrectly assume their property can be sold for the appraised market value if they encounter financial difficulties. A few commenters that supported an increase argued that neither appraisals nor evaluations are consumer protection tools for homebuyers, asserting that both are received after prospective buyers have entered into a purchase and sale agreement (PSA) to purchase the residential property at a specified price.

Some commenters that opposed an increase in the residential threshold argued that, unlike for faulty appraisals, consumers do not have any recourse for faulty evaluations. Some commenters noted that consumers may file an official complaint with a state's appraiser board to address an inaccurate appraisal, which is not an option for addressing an inaccurate evaluation performed by a non-appraiser. In addition, one commenter questioned whether evaluations could be used to renegotiate or cancel PSAs under an appraisal contingency clause.

A number of commenters opposed to a threshold increase asserted that appraisals are easier for consumers to understand than evaluations. Some commenters noted the standardized requirements of a USPAP-compliant appraisal report provide information in a consistent manner and ensure that the user has enough information to understand the conclusions in the report. Some commenters opposed to an increase raised concerns that free online valuation information and tools may be flawed due to, for example, their reliance on public records with data entry errors.

One commenter in favor of an increased threshold indicated that evaluations are often easier for consumers to read and understand, asserting that they typically explain the comparisons with other recent sales in ''plain English.'' Some commenters generally in favor of an increase noted that consumers have access to a wide array of readily available valuation information, and may also voluntarily obtain appraisals.

[57] OCC: 12 CFR 34.43(c); Board: 12 CFR 225.63(c); FDIC: 12 CFR 323.3(c).

[58] OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

[59] Guidelines, Section XIII.

[60] Evaluations Advisory at 2.

[61] Guidelines, Section V.

Numerous commenters opposed to a threshold increase asserted that an increase to the appraisal threshold would have a disproportionately negative impact on more at-risk consumers, such as low-income individuals, members of certain minority groups, or first-time homebuyers, because at-risk borrowers are more likely to purchase homes priced in lower ranges and, therefore, are more likely to enter into residential transactions without the benefit of an appraisal. Some commenters asserted that first-time homebuyers are among the consumers least able to manage financial risk, and are most in need of consumer protections. According to several of these commenters, this is because first-time homebuyers typically use a substantial portion of their savings for the down payment or obtain mortgages with high loan-to-value ratios.

In adopting the threshold increase for residential mortgage loans as proposed, the agencies appreciate and have considered the consumer protection issues and concerns raised by the commenters. Based on their supervisory experience with evaluations since 1994, the agencies have found that both appraisals and evaluations can protect consumers by facilitating the informed use of credit and helping to ensure the estimated value of the property supports the purchase price and mortgage amount. Further, the agencies consulted with the CFPB throughout the development of the proposal and final rule and, as required by Title XI,[62] have received concurrence from the CFPB that the residential real estate appraisal threshold being adopted provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

In response to the comments concerning valuation independence, the agencies have long recognized that evaluations prepared by competent and independent preparers can provide credible valuation information for residential real estate transactions. In addition, the Dodd-Frank Act contained provisions that addressed independence requirements applicable to ''valuations'' for consumer-purpose mortgages secured by a consumer's principal dwelling. The Valuation Independence Rule,[63] which implements the Dodd-Frank Act independence provisions, states that ''no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.'' [64] Additionally, the rule prohibits mischaracterizations of property value and conflicts of interest for persons preparing valuations or performing valuation management functions.[65] These independence requirements extend to appraisals, evaluations, and other estimations of value and encompass not only individuals preparing such valuations but also those performing valuation management functions.[66] The failure to comply with the independence requirements in the Valuation Independence Rule can result in civil liability.[67]

In response to comments concerning on-site inspections of real estate, the agencies note that USPAP does not require appraisers to inspect the subject property and that some appraisers use third parties to conduct inspections. As such, not all appraisals include inspections. As with appraisals, the agencies note that when financial institutions obtain an evaluation, the evaluation will often include a physical property inspection, which can provide a prospective buyer with relevant information about a property's condition. Evaluations, like appraisals, should contain sufficient information and analysis to support the institution's decision to engage in a credit decision, including information relating to the actual physical condition and characteristics of the property, as discussed in the Guidelines.[68] The individual who is performing the evaluation should determine whether a physical property inspection is necessary to support the property's value. Based on the agencies' supervisory experience with appraisals and evaluations since 1994, the agencies believe that property inspections done by appropriately trained individuals for either appraisals or evaluations can provide prospective buyers with detailed information regarding a property's condition and features, may provide consumer protection, and can help ensure that appraisals or evaluations are consistent with safe and sound banking practices.

The agencies recognize that some consumers may seek to include appraisal contingency clauses in PSAs. However, the threshold exemption does not affect the ability to enter into these arrangements. One commenter suggested that evaluations may not constitute appraisals for purposes of appraisal contingency clauses and may cause confusion to consumers opting for these contingencies. The agencies are not aware of any such issues regarding the current threshold, which already exempts a significant portion of residential real estate transactions. In this regard, the agencies do not have reason to believe that the incremental increase in exempted transactions will create consumer protection concerns related to PSAs. With respect to consumer recourse for faulty evaluations, available information from entities that use or provide evaluations indicates that lenders often order appraisals when disputes arise with evaluations, so the agencies do not expect the proposal to materially affect options for consumer recourse.

Regarding the impact of the threshold increase on consumers' understanding of and access to valuation information, the agencies note that lenders must provide a copy of all appraisals and written valuations developed in connection with an application for a first-lien loan secured by a dwelling,[69] which includes both appraisals and evaluations. In addition, although all sources of publicly available valuation information might not always accurately

[62] In the Dodd-Frank Act, Congress amended the threshold provision to require ''concurrence from the Bureau of Consumer Financial Protection that such threshold level [established by the agencies] provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' 12 U.S.C. 3341(b).

[63] *See* Interim Final Rule for Valuation Independence, 75 FR 66554 (October 28, 2010) and 75 FR 80675 (December 23, 2010), Board: 12 CFR 226.42; CFPB: 12 CFR 1026.42 (implementing valuation independence amendments to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* by Dodd-Frank Act section 1472, 15 U.S.C. 1639e).

[64] Board: 12 CFR 226.42(c)(1); CFPB: 12 CFR 1026.42(c)(1).

[65] *See* Board: 12 CFR 226.42(c)(2), (d); CFPB: 12 CFR 1026.42(c)(2), (d).

[66] Valuation management functions include: ''Recruiting, selecting, or retaining a person to prepare a valuation''; ''contracting with or employing a person to prepare a valuation''; ''managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations''; and ''reviewing or verifying the work of a person that prepares valuations.'' 12 CFR 1026.42(b)(4).

[67] *See* 15 U.S.C. 1640.

[68] Guidelines, Section XII.

[69] *See* 12 CFR 1002.14, 78 FR 7216 (January 31, 2013) (implementing amendments to the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.,* by Dodd-Frank Act section 1474, 15 U.S.C. 1691(e)).

reflect the market value of a particular property, consumers can use a variety of available information to learn more about the availability of and the potential range of values for properties in a particular area or market. Moreover, although limited in scope, the higher-priced mortgage loan rule (HPML rule),[70] as adopted by the agencies, requires lenders for certain HPMLs secured by a consumer's principal dwelling to obtain an appraisal—and in some cases two appraisals—that include an interior property visit, and provide free copies to the consumer. The HPML Rule applies to certain higher-risk transactions. Thus, for a select group of loans, the HPML Rule assures that the information in an appraisal will be available for some of the consumers who might be more likely to fall into the at-risk categories mentioned by commenters as being most affected by the threshold increase.

Finally, the agencies note that even when the transaction amount is at or below the threshold, the Guidelines [71] encourage regulated institutions to establish policies and procedures for obtaining Title XI appraisals when necessary for risk management. As discussed above, the FR Y–14M data reviewed by the agencies found that lenders included in the data obtained appraisals on 74 percent of residential real estate loans of $250,000 and below that were held in portfolio. These empirical data indicate that lenders generally obtain appraisals for a majority of residential real estate transactions for which the agencies' appraisal regulations permitted an evaluation. These data are also consistent with some commenters' assertions that lenders would continue to use a risk-based approach in determining whether to obtain an evaluation or an appraisal for a particular transaction, regardless of the threshold amount. Further, consumers may voluntarily obtain appraisals regardless of whether the regulated institution is required to do so.

5. *Reducing Burden Associated with Appraisals.* In proposing the increase in the residential appraisal threshold, the agencies considered that the increased use of evaluations would likely reduce the time and costs associated with residential real estate transactions, which in turn would reduce burden for financial institutions and consumers. The agencies invited comment on the cost and time associated with performing and reviewing evaluations as compared to Title XI appraisals. The agencies also invited comment on the appropriateness of the data used in the proposal and requested any suggestions for alternative sources of data.

The agencies received a number of comments indicating that the proposed increase in the residential real estate appraisal threshold would result in cost and time savings for consumers and regulated institutions. Several commenters concurred with the agencies' cost estimates in the proposal. One commenter indicated that evaluation tools provide accurate valuation information at approximately half the cost of an appraisal. Another commenter estimated that an evaluation could cost between 20 and 50 percent of the price of a comparable appraisal, and that an evaluation can generally be delivered in one to five days while an appraisal may take between five and twenty-one days. Another commenter asserted that evaluations typically cost about $100 less than appraisals. One commenter noted that evaluations are often performed by bank employees, in which case the customer is not typically charged for the service, and that when the lender obtains an evaluation from a third-party provider (as opposed to using its own employee), borrowers may still save approximately 50 percent. Some commenters also asserted that the proposed threshold increase would reduce the time needed for appraisal review. The agencies received several comments from financial institutions, financial institution trade associations, and state regulators asserting that the proposals would particularly reduce delays and costs in rural areas that may be experiencing a shortage of state licensed or state certified appraisers. Two of these commenters specifically asserted that a broadly applicable threshold increase to $400,000, rather than the more limited rural residential appraisal exemption, is appropriate because it would provide additional burden relief by eliminating unnecessary qualifying criteria. One of these commenters, a financial institution trade association from a large state, asserted that the rural residential appraisal exemption would not apply to transactions in areas representing 86 percent of the state's population, and that the proposed threshold increase thus would provide additional burden relief in the state beyond what was provided by the rural residential appraisal exemption.

Other commenters questioned how much relief the proposal would provide. Some commenters noted the agencies' acknowledgement that there is limited information on the cost and time burden of evaluations versus appraisals and urged the agencies to obtain additional data to quantify any expected savings. Several commenters noted that the cost of an appraisal is relatively small compared to other financing costs in the transaction such as the fees charged by banks and brokers. Some of these commenters also suggested that any cost savings to consumers would be outweighed by the financial harm that could result from purchasing a home without an estimate of value provided by an appraiser. One commenter indicated that evaluations may take longer to review than appraisals. Another argued that even if an appraisal takes longer to review, the time difference is not significant and would not delay a loan closing. Some commenters questioned the need for, and appropriateness of, the proposed threshold increase in light of the rural residential appraisal exemption.

Several commenters challenged the agencies use in the proposal of the Department of Veterans Affairs (VA) appraisal fee schedule as support for their analysis of potential cost savings, arguing that the $600 average cost noted in the proposal based on the VA fee schedule likely overstates the cost of appraisals. One commenter noted the VA's underwriting requirements exceed USPAP standards, which increases costs. Some of these commenters cited alternative sources for fee data, including several state-specific studies. One such commenter referred to a survey showing that VA fees are higher than the norm, indicating that the median cost of an appraisal is $450, with 89 percent of those surveyed stating the typical cost of an appraisal is below $600. This commenter also questioned whether the cost and time to receive an appraisal were burdensome, as its survey reflected that appraisals represented less than 0.2 percent of the total transaction cost and that the typical wait time for an appraisal in 2018 was only 7 days.

A number of commenters disputed that there are appraiser shortages warranting regulatory relief outside of

[70] OCC: 12 CFR part 34, subpart G; Board: 12 CFR 226.43; FDIC (through adoption of CFPB rule): 12 CFR 1026.35(c). The FDIC adopted the HPML Rule as published in the CFPB's regulation. *See* 78 FR 10368–01, 10370 (December 26, 2013). Exemptions from the requirements of the HPML Rule include, among others, ''qualified mortgages'' under 15 U.S.C. 1639c (implemented by the CFPB at 12 CFR 1026.43); reverse mortgages subject to 12 CFR 1026.33; and certain refinancings. *See* OCC: 12 CFR 34.203(b); Board: 12 CFR 226.43(b); FDIC (through adoption of CFPB rule): 12 CFR 1026.35(c)(2). Exemptions from the requirement for two appraisals for certain transactions include, among others, extensions of credit that finance a consumer's acquisition of property located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A). *See* OCC: 12 CFR 34.203(d)(7)(H); Board: 12 CFR 226.43(d)(7)(H); FDIC (through adoption of CFPB rule): 12 CFR 1026.35(c)(4)(vii)(H).

[71] *See* Guidelines, Section XI.

rural areas, with some offering supporting data from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and the Appraisal Foundation. Several commenters identified appraisal management companies (AMCs) as a significant source of unnecessary costs and delays, and suggested that appraiser shortages are due to the low appraisal fees AMCs offer, resulting in appraisers being unwilling to work for AMCs.

The agencies considered these comments in evaluating the rule's potential impact. As discussed further below, available data and analysis indicate that, while there is limited information available to compare the cost and time savings related to performing appraisals versus evaluations, raising the residential threshold, and the corresponding increased use of evaluations, will lead to some level of cost savings for consumers and institutions. The agencies also conclude that raising the threshold is likely to reduce the time needed to find appropriate personnel to perform the valuation, particularly in areas experiencing shortages of certified or licensed appraisers.

As noted in the proposal, and according to data submitted by commenters, the cost of obtaining an evaluation can be substantially less than the cost of obtaining an appraisal, with estimates ranging from evaluations costing $100 less than the cost of an appraisal or less than half (with one estimate of 20 percent) of the cost of an appraisal. The agencies acknowledge the limitations in relying on the VA appraisal fee schedule, which may reflect appraisal fees that are higher than average across the industry. However, even if the average appraisal cost is less than the $375 to $900 range suggested in the proposal, the agencies believe expanding the use of evaluations will produce time and cost savings. Some commenters indicated that, while the cost of an appraisal is generally passed on to the borrower, an evaluation performed by in-house staff may be provided at no cost to the borrower. When a borrower pays for an evaluation outsourced to a third-party, the cost may still be significantly less than for a comparable appraisal.

The agencies also note that regulated institutions generally need less time to review evaluations than Title XI appraisals because the content of the report can be less comprehensive than an appraisal report. Institutions are more likely to obtain an evaluation, where permitted, for transactions with a lower dollar value, that are less complex, or that are subsequent to a previous transaction for which a Title XI appraisal was obtained. As a result, evaluations are often simpler and take less time to review than appraisals. Based on supervisory experience, the agencies have previously estimated that, on average, the time to review evaluations takes approximately 30 minutes less than the time to review appraisals. While the precise time and cost reduction per transaction is difficult to determine, the agencies conclude that the increased threshold is likely to result in some level of cost and time savings for regulated institutions that engage in residential real estate lending and for consumers.

In considering the aggregate effect of this rule, the agencies also considered the number of transactions likely to be affected by the increased threshold. As discussed above, the agencies' analysis of 2017 HMDA data suggests that increasing the residential threshold from $250,000 to $400,000 would exempt an additional 214,000 residential real estate originations at regulated institutions from the agencies' appraisal requirement, representing an additional 16 percent of all regulated transactions. While the supervisory data discussed above suggest that use of evaluations is lower than it could be, the agencies expect that raising the residential appraisal threshold will still provide burden relief because it will provide flexibility in those situations where obtaining an appraisal would significantly delay the transaction and the financial institution determines that an evaluation would be sufficient for the safety and soundness of the particular transaction.

B. Incorporation of the Rural Residential Appraisal Exemption Under Section 103 of the Economic Growth, Regulatory Relief, and Consumer Protection Act

As discussed above, in section 103 of EGRRCPA, Congress amended Title XI in 2018 to add a rural residential appraisal exemption.[72] Under this new exemption, a financial institution need not obtain a Title XI appraisal if the property is located in a rural area; the transaction value is less than $400,000; the financial institution retains the loan in portfolio, subject to exceptions; and not later than three days after the Closing Disclosure Form is given to the consumer, the financial institution or its agent has contacted not fewer than three state certified or state licensed appraisers, as applicable, and has documented that no such appraiser was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments.[73]

The proposed rule would have amended the agencies' appraisal regulations to reflect the rural residential appraisal exemption under section 103 of EGRRCPA in the list of transactions that are exempt from the agencies' appraisal requirement. The amendment to this provision would have been a technical change that would not alter any substantive requirement, because the statutory provision is self-effectuating and the proposed threshold increase to $400,000 would encompass loans that would otherwise qualify for the section 103 rural residential appraisal exemption. In addition, the proposed rule would have required evaluations for transactions that are exempt from the agencies' appraisal requirement under the rural residential appraisal exemption under section 103 of EGRRCPA. The agencies proposed that financial institutions obtain evaluations for these transactions because evaluations protect the safety and soundness of financial institutions.

In the proposed rule, the agencies specifically asked what challenges, if any, would be posed by requiring lenders to obtain evaluations where the rural residential appraisal exemption under section 103 of EGRRCPA is used. The agencies received very few comments on the proposed evaluation requirement. A few commenters asserted that the preparation of both appraisals and evaluations on properties located in rural areas may be affected by the limited comparable sales data available in rural areas.

After considering the comments received, the agencies have decided to implement the requirement for regulated institutions to obtain evaluations when the rural residential appraisal exemption is used. The agencies recognize that the scarcity of comparable sales data in rural areas has been a long-standing issue and issued guidance in 2016 to assist institutions in obtaining evaluations in rural areas with few or no recent comparable sales.[74] Since the early 1990s, the agencies' appraisal regulations have required that regulated institutions obtain evaluations for certain other exempt residential real

[72] Public Law 115–174, Title I, section 103, codified at 12 U.S.C. 3356.

[73] 12 U.S.C. 3356. The mortgage originator must be subject to oversight by a Federal financial institutions regulatory agency, as defined in Title XI. Further, the exemption does not apply to loans that are high-cost mortgages, as defined in section 103 of TILA, or if a Federal financial institutions regulatory agency requires an appraisal because it believes it is necessary to address safety and soundness concerns.

[74] Evaluations Advisory at 3.

estate transactions (which in practice are generally retained in their portfolios). Requiring evaluations for transactions exempted by the rural residential appraisal exemption reflects the agencies' long-standing view that safety and soundness principles require institutions to obtain an understanding of the value of real estate collateral underlying most real estate-related transactions they originate.

For clarity, the agencies note that under the final rule, creditors operating in rural areas could opt to rely on the more broadly applicable exemption for transactions of $400,000 or less in lieu of the rural residential appraisal exemption and will not need to meet the additional criteria required under the rural residential appraisal exemption. This is because the broader exemption for transactions of $400,000 or less adopted in this final rule encompasses the more narrow exemption under EGRRCPA section 103. An evaluation is required regardless of which of these exemptions is relied upon. By specifying that an evaluation is required for transactions in which all of the criteria under EGRRCPA section 103 are met, the agencies seek to streamline the exemption rules and eliminate confusion for creditors operating in rural areas.

C. Addition of the Appraisal Review Requirement

Section 1473(e) of the Dodd-Frank Act amended Title XI to require that the agencies' appraisal regulations include a requirement that Title XI appraisals be subject to appropriate review for compliance with USPAP.[75] The proposed rule would have made a conforming amendment to add this statutory requirement for appraisal review to the appraisal regulations. The agencies proposed to mirror the statutory language for this standard. The agencies also indicated in the proposal that the Guidelines provide more information to assist financial institutions in the appropriate review of appraisals and evaluations.[76]

In the proposal, the agencies specifically asked what concerns, if any, would be posed by requiring lenders to conduct appropriate reviews of Title XI appraisals for compliance with USPAP. The agencies received very few comments addressing the appraisal review proposal. One commenter indicated that appraisal review provides significant consumer and lender safeguards. Another commenter expressed concern that a requirement for appraisal review would force some financial institutions to outsource the review process, given that many small institutions do not have staff trained in USPAP standards, which would add considerable overhead expense for financial institutions. This commenter also requested clarification of whether evaluations must be reviewed for compliance with USPAP.

In response to these comments, the agencies note that the appraisal review proposed is statutorily required by Title XI. In addition, the agencies have long recognized that appraisal review is consistent with safe and sound banking practices, as outlined in the Guidelines, and should be employed as part of the credit approval process to ensure that appraisals comply with USPAP, the appraisal regulations, and a financial institution's internal policies.[77] As noted in the Guidelines, appraisal reviews should help ensure that an appraisal contains sufficient information and analysis to support the decision to engage in the transaction, as required by the appraisal regulations.[78] Through the review process, the institution should be able to assess the reasonableness of the valuation method, the assumptions, and whether data sources are appropriate and well-supported.[79]

As a reflection of the long-standing guidance on appraisal review, many financial institutions may already have review processes in place for these purposes. With respect to the question concerning evaluations and appraisal review, the agencies note that evaluations need not comply with USPAP. While financial institutions should continue to conduct safety and soundness reviews of evaluations to ensure that an evaluation contains sufficient information and analysis to support the decision to engage in the transaction, the USPAP review requirement in Title XI does not apply to such a review.

After carefully considering the comments received, the agencies have decided to implement the requirement that financial institutions review appraisals for federally related transactions for compliance with USPAP. The agencies encourage regulated institutions to review their existing appraisal review policies and incorporate additional procedures for subjecting appraisals for federally related transactions to appropriate review for compliance with USPAP, as needed. Financial institutions may refer to the Guidelines for more information to assist them in the appropriate review of appraisals and evaluations.[80]

D. Conforming and Technical Amendments

The agencies' appraisal regulations require that all complex 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall have a state certified appraiser if the transaction value is $250,000 or more.[81] In order to make this paragraph consistent with the other proposed changes to the agencies' appraisal regulations, the agencies proposed changes to its wording to incorporate the proposed definition of ''residential real estate transaction,'' to introduce the $400,000 threshold, and to make other technical and conforming changes. The agencies also proposed to amend the definitional term ''complex 1-to-4 family residential property appraisal'' to ''complex appraisal for a residential real estate transaction'' to conform to the definition of residential real estate transaction. The proposed amendments to these provisions would have been conforming changes that would not alter any substantive requirements.

The agencies received one comment on these conforming changes seeking clarification as to whether certified appraisers would be required for complex appraisals for residential real estate transactions above $400,000 or transactions at or above $400,000. As provided in the rule text, the requirement will only apply to transactions above $400,000. The agencies did not receive further comment on these proposed technical and conforming changes and are adopting the proposed technical changes as final.

III. Effective Date

All provisions of the rule, other than the evaluation requirement for transactions exempted by the rural residential appraisal exemption[82] and the requirement to subject appraisals to appropriate review for compliance with USPAP (as discussed below) are effective the first day after publication of the final rule in the **Federal Register**. The 30-day delayed effective date required under the Administrative Procedure Act is waived for all other amendments to the regulation, pursuant

[75] Dodd-Frank Act, section 1473, Public Law 111–203, 124 Stat. 1376.

[76] *See* Guidelines, Section XV.

[77] *See id.*

[78] *See* OCC: 12 CFR 34.44(b); Board: 12 CFR 225.64(b); FDIC: 12 CFR 323.4(b).

[79] *See* Guidelines, Section XV.

[80] *See id.*

[81] OCC: 12 CFR 34.43(d)(3); Board: 12 CFR 225.63(d)(3); FDIC: 12 CFR 323.3(d)(3).

[82] *See supra* note 3.

to 5 U.S.C. 553(d)(1), which provides an exception to the 30-day delayed effective date requirement when a substantive rule grants or recognizes an exemption or relieves a restriction. The amendments to increase the residential appraisal threshold exempts additional transactions from the agencies' appraisal requirement, which would have the effect of relieving restrictions. Consequently, all provisions of this rule, except the evaluation requirement for transactions exempted by the rural residential appraisal exemption and the appraisal review provision, meet the criteria to waive the 30-day delayed effective date requirement set forth in the Administrative Procedure Act.

The provisions for the evaluation requirement for transactions exempted by the rural residential appraisal exemption and for the appraisal review will be effective on January 1, 2020. The delayed effective date will provide regulated institutions adequate time to implement procedures for obtaining an evaluation for certain residential transactions secured by property in a rural area that are exempt from the appraisal requirements and for subjecting appraisals for federally related transactions to appropriate review for compliance with USPAP.[83] The agencies did not receive any comments on the proposed effective date.

IV. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include commercial banks and savings institutions, and trust companies, with assets of $600 million or less and $41.5 million or less, respectively) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The OCC currently supervises 1,211 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks) of which approximately 782 are small entities.[84] The OCC estimates that the final rule may impact approximately 734 of these small entities. The final rule to increase the residential threshold may result in cost savings for impacted institutions.

For transactions at or below the new residential threshold, regulated institutions will be given the option to obtain an evaluation of the property instead of an appraisal. While the cost of obtaining appraisals and evaluations can vary and may be passed on to borrowers, evaluations generally cost less to perform than appraisals, given that evaluations are not required to comply with USPAP. In addition to costing less than an appraisal, evaluations may require less time to review than appraisals because evaluations typically contain less detailed information than appraisals. In addition to savings relating to the relative costs associated with appraisals and evaluations, the final rule may also reduce burden for institutions in areas with appraiser shortages. In the course of the agencies' most recent EGRPRA review, commenters contended that it can be difficult to find state certified and licensed appraisers, particularly in rural areas, which results in delays in completing transactions and sometimes increased costs for appraisals.[85] For this reason, substituting evaluations for appraisals may reduce burden for institutions in areas with appraiser shortages. While the increased residential threshold may decrease costs for institutions, the extent to which institutions will employ evaluations instead of appraisals is uncertain, given that institutions retain the option of using appraisals for below-threshold transactions.

The requirement in the final rule that institutions obtain an evaluation for transactions that qualify for the rural residential appraisal exemption could be viewed as a new mandate. However, because the final rule increases the residential threshold to $400,000 for all residential transactions, institutions will not need to comply with the detailed requirements of the rural residential appraisal exemption in order for such transactions to be exempt from the agencies' appraisal requirement. Therefore, complying with the evaluation requirement for below-threshold transactions will be significantly less burdensome than complying with the requirements of the rural residential appraisal exemption.

The requirement that Title XI appraisals be subject to appropriate review for USPAP compliance could also be viewed as a new mandate. The OCC does not believe, however, that this requirement will impose a significant burden or economic impact on regulated institutions because Title XI and the agencies' appraisal regulations already require that Title XI appraisals be performed in compliance with USPAP. In addition, many financial institutions already have review processes in place to ensure that appraisals comply with USPAP. Finally, the OCC notes that the requirement for appraisal review is statutorily mandated by Title XI.

Because the final rule does not contain any new recordkeeping, reporting, or significant compliance requirements, the OCC anticipates that costs associated with the final rule, if any, will be de minimis. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

FRB: The RFA [86] generally requires that an agency prepare and make available a final regulatory flexibility analysis in connection with a final rulemaking that the agency expects will have a significant economic impact on a substantial number of small entities. The regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The agencies are increasing the threshold from $250,000 to $400,000 at or below which a Title XI appraisal is not required for residential real estate transactions in order to reduce regulatory burden in a manner that is consistent with the safety and soundness of financial institutions. To ensure that the safety and soundness of

[83] As discussed below, new requirements on insured depository institutions (IDIs) generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. *See* 12 U.S.C. 4802(b).

[84] The OCC bases this estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC includes the assets of affiliated financial institutions when determining whether to classify an OCC-supervised institution as a small entity. The OCC used December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported in its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[85] *See* EGRPRA Report, *available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[86] 5 U.S.C. 601 *et seq.*

regulated institutions are protected, the agencies will require evaluations for transactions that are exempted by the increased residential appraisal threshold. The final rule also requires evaluations for transactions exempted by the rural residential appraisal exemption. In order to fulfill the agencies' statutory responsibility under the Dodd-Frank Act, the agencies are also adding to the appraisal regulations a requirement that appraisals be subject to appropriate review for compliance with USPAP.

The Board's rule applies to state chartered banks that are members of the Federal Reserve System (state member banks), as well as bank holding companies and nonbank subsidiaries of bank holding companies that engage in lending. There are approximately 529 state member banks and 232 nonbank lenders regulated by the Board that meet the SBA definition of small entities and are subject to the final rule. Data currently available to the Board do not allow for a precise estimate of the number of small entities that are affected by the threshold increase or the evaluation requirement for transactions exempted by the rural residential appraisal exemption, because the number of small entities that engage in residential real estate transactions qualifying for these exemptions is unknown.

The increased threshold level for residential transactions is expected to produce cost and time savings for financial institutions without imposing any burden, since it will permit institutions to use evaluations instead of appraisals for a greater number of transactions, and evaluations generally cost less and take less time to conduct and review than appraisals. The cost and time savings produced for institutions by obtaining evaluations versus appraisals is difficult to quantify because of limited available data and variation based on the type and complexity of the transaction. Costs of appraisals and evaluations may also be passed on to borrowers.

With respect to transactions that qualify for the rural residential appraisal exemption, the requirement that institutions obtain evaluations for such transactions could be viewed as an additional burden. However, because the final rule increases the residential threshold to $400,000 for all residential transactions, institutions, including small entities, will not need to comply with the detailed requirements of the rural residential appraisal exemption in order for such transactions to be exempt from the agencies' appraisal requirement. Complying with the evaluation requirement for transactions below the residential appraisal threshold is likely to be less burdensome than complying with the requirements of the rural residential appraisal exemption. Overall, the Board does not believe this requirement will have a significant economic impact on small institutions.

The requirement that Title XI appraisals be subject to appropriate review for USPAP compliance applies to all small entities regulated by the Board that engage in real estate lending. However, the Board does not believe this requirement would impose a significant burden or economic impact on such institutions because the agencies' appraisal requirements already require that Title XI appraisals be performed in compliance with USPAP. Further, many financial institutions already have review processes in place to ensure that appraisals comply with USPAP.

The final rule does not contain any new recordkeeping, reporting, or significant compliance requirements. Based on information available to the Board, the final rule is not expected to impose any significant cost or burden on small entities, and small entities and borrowers engaging in residential real estate transactions could experience cost reductions; however, the overall economic impact on small entities is not expected to be significant. The Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised by the Board.

FDIC: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available a final regulatory flexibility analysis describing the impact of the rule on small entities.[87] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[88] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic effect on a substantial number of small entities.

The FDIC supervises 3,465 depository institutions,[89] of which 2,705 are defined as small entities by the terms of the RFA.[90] In 2017, 1,139 small, FDIC-supervised institutions reported originating residential real estate loans. However, beginning in 2017, FDIC-supervised institutions ceased reporting residential loan origination data in compliance with HMDA if they originated less than 25 loans per year. Therefore, in order to more accurately assess the number of institutions that could be affected by this rule we counted the number of existing institutions who reported any residential loan originations in 2015, 2016, or 2017. By that measure, 1,430 (52.9 percent) are estimated to be affected by this rule.[91]

The final rule is likely to reduce loan valuation-related costs for small, covered institutions. By increasing the residential real estate appraisal threshold, the rule is expected to increase the number of residential real estate loans eligible for an evaluation, instead of an appraisal. The FDIC estimates that, on average, the review process for an appraisal would take approximately forty minutes, but only ten minutes, on average, for an evaluation. Therefore, the FDIC estimates that the rule would reduce loan valuation-related costs for small, FDIC-supervised institutions by 30 minutes per transaction, on average. According to 2017 HMDA data, 13.3 percent of residential real estate loans originated by small, FDIC-supervised institutions and affiliated institutions are subject to the Title XI appraisal requirements and have loan amounts between $250,000 and $400,000.[92] Additionally, of the 1,430 small, FDIC-supervised institutions that reported residential loan originations, a total of 163,148 residential real estate loans

[87] 5 U.S.C. 601 *et seq.*

[88] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[89] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[90] Call Report, March 31, 2019.

[91] HMDA data, December 2015–2017.

[92] HMDA data, December 2017.

were originated,[93] and the average number of originations per year was approximately 128. Assuming that 13.3 percent of originations by small, FDIC-supervised institutions fall in the $250,000 to $400,000 range and are subject to the Title XI appraisal requirement, approximately 21,699 originations per year, or an average of 15 per small, FDIC-supervised institution, would have the option of an evaluation rather than an appraisal as a result of this rule. Thus, by using evaluations instead of appraisals a small, FDIC-supervised institution may reduce its total annual residential real estate transaction valuation-related labor hours by 7.5 hours.[94] The FDIC estimates this will result in a potential cost savings for small, FDIC-supervised institutions of $519.15 per year, per institution.[95] The estimated reduction in costs would be smaller if lenders opt to not utilize an evaluation and require an appraisal on a residential real estate transaction greater than $250,000 but not more than $400,000. These estimated savings would not exceed 5 percent of annualized salary expense or 2.5 percent of annualized noninterest expense for any small, FDIC-supervised institutions.[96]

This rule is likely to reduce residential real estate transaction valuation-related costs for the parties involved. By increasing the residential real estate appraisal threshold, the rule is expected to increase the number of residential real estate loans eligible for an evaluation, instead of an appraisal. As discussed in the proposal, the United States Department of Veterans Affairs' appraisal fee schedule [97] for a single-family residence generally ranges from $375 to $900, depending on the location of the property. While the FDIC does not have definitive data on the cost of evaluations, some of the comments from financial institutions and their trade associations represented that evaluations are less costly than appraisals. Making more residential real estate transactions eligible for evaluations rather than appraisals is likely to reduce transaction valuation-related costs. However, the FDIC assumes that most, if not all, of these cost reductions would be passed on to residential real estate buyers. Therefore, this aspect of the rule is likely to have little or no effect on small, FDIC-supervised entities.

The FDIC does not expect the rule to have any substantive effects on the safety and soundness of small, FDIC-supervised institutions. Analysis of HMDA data shows that the rule would newly exempt from appraisal requirements an estimated 13.3 percent of transactions, and 23 percent of the dollar volume of transactions, among small, FDIC-supervised institutions. Assuming that loans secured by residential properties with values from $250,000 to $400,000 represent the same percentage of the residential real estate loan portfolios of small, FDIC-supervised institutions as they do of the dollar volume of new originations, such loans do not represent more than 19.5 percent of total assets for any small, FDIC-supervised institutions.[98] The aggregate value of such loans for all small, FDIC-supervised institutions represents approximately four percent of assets, assuming that 23 percent of each institution's portfolio of loans secured by first liens on one- to four-family residential mortgages is made up of loans with a value at origination of $250,000 to $400,000.[99] While exempted transactions would not require an appraisal, they would still require an evaluation that is consistent with safe and sound banking practices. As previously discussed in the Revisions to the Title XI Appraisal Regulations section,[100] supervisory experience indicates that appraisals and evaluations are both credible tools to support real estate lending decisions, so the FDIC does not expect that increasing the threshold for appraisals will affect the safety and soundness of small, FDIC-supervised institutions. Further, historical loss information in the Call Reports reflects that the net charge-off rate for residential transactions did not increase after the increase in the appraisal threshold from $100,000 to $250,000 in June 1994, or during and after the recession in 2001 through year-end 2007. During this timeframe, the net charge-off rate for small, FDIC-supervised institutions ranged from 1 basis point to 9 basis points. However, the net charge-off rate for residential transactions increased significantly from 2008–2013, which was during and immediately after the recent recession, ranging from 3 basis points to 55 basis points. As discussed earlier, the agencies attribute the increase in the net charge-off rate for loans secured by single 1-to-4 family residential real estate during the recent recession to weak underwriting standards in the lead up to the crisis. Therefore, the FDIC believes the proposed rule is unlikely to pose significant safety and soundness risks for small, FDIC-supervised entities.

The rule is likely to pose relatively larger residential real estate valuation-related transaction cost reductions for rural buyers and small, FDIC-supervised institutions lending in rural areas; however, these effects are difficult to accurately estimate. Home prices in rural areas are generally lower than those in suburban and urban areas. Therefore, residential real estate transactions in rural areas are likely to utilize evaluations more than appraisals, under the proposed rule. Additionally, there may be less delay in finding qualified personnel to perform an evaluation than to perform a Title XI appraisal, particularly in rural areas.

Finally, by potentially reducing valuation-related costs associated with residential real estate transactions for properties greater than $250,000 but not more than $400,000, the proposed rule could result in a marginal increase in lending activity of small, FDIC-supervised institutions for properties of this type. However, the FDIC believes that this effect is likely to be negligible given that the potential cost savings of using an evaluation, rather than an appraisal, represents between 0.12–0.29 percent of the median home price.[101]

For the reasons described above and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 [102] (PRA), the agencies may not conduct or sponsor, and a 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

[93] *Id.*

[94] 0.5 hours *15 originations = 7.5 hours.

[95] 7.5 hours * $69.22 per hour = $519.15 The FDIC estimates that the average hourly compensation for a loan officer is $69.22 an hour. The hourly compensation estimate is based on published compensation rates for Credit Counselors and Loan Officers ($44.30). The estimate includes the May 2017 75th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2017 and December 2018 (3.59 percent) and grossed up by 50.8 percent to account for non-monetary compensation as reported by the December 2018 Employer Costs for Employee Compensation Data.

[96] Call Report, March 31 2019.

[97] *See https://www.benefits.va.gov/HOMELOANS/appraiser_fee_schedule.asp.*

[98] Call Report data, March 31, 2019.

[99] *Id.*

[100] *See supra,* Section II.

[101] Median home price in the United States as of January 2019 is estimated at $307,700 by the Federal Reserve Bank of St. Louis. *See https://fred.stlouisfed.org/series/MSPUS.* $375/$307,700 = .001218, $900/$307,700 = .002925.

[102] 44 U.S.C. 3501–3521.

agencies have reviewed this final rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. In addition, the agencies received no comments on the PRA analysis in the proposal. Therefore, no submissions will be made to OMB for review.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[103] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[104]

The agencies recognize that the requirement to obtain an evaluation for transactions exempted by the rural residential appraisal exemption [105] could be considered by IDIs to be a new requirement, despite the longstanding requirements for IDIs to obtain evaluations for transactions exempt from agencies' appraisal requirement under a threshold exemption. The agencies also recognize that the requirement for an appraisal review could be considered by IDIs to be a new requirement, despite the longstanding practice of many financial institutions to conduct appraisal reviews. Accordingly, with respect to the requirement that financial institutions obtain evaluations for transactions exempted by the rural residential appraisal exemption and the requirement for appraisal review, the effective date will be January 1, 2020, which is the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, consistent with RCDRIA.

Otherwise, the final rule reduces burden and does not impose any reporting, disclosure, or other new requirements on IDIs. For transactions exempted from the agencies' appraisal requirement by the final rule (*i.e.,* residential real estate transactions between $250,000 and $400,000), lenders are required to get an evaluation if they chose not to get an appraisal. However, the agencies do not view the option to obtain an evaluation instead of an appraisal as a new or additional requirement for purposes of RCDRIA. First, the process of obtaining an evaluation is not new since IDIs already obtain evaluations for transactions at or below the current $250,000-threshold. Second, for residential real estate transactions between $250,000 and $400,000, IDIs could continue to obtain appraisals instead of evaluations. Because the final rule does not impose new requirements on IDIs, the agencies are not required by RCDRIA to consider the administrative burdens and benefits of the rule or delay its effective date (other than the evaluation provision for transactions exempted by the rural residential appraisal exemption or and the appraisal review provision, as discussed above).

Because delaying the effective date of the final rule's threshold increase is not required and would serve no purpose, the threshold increase and all other provisions of the final rule, other than the evaluation requirement for the rural residential appraisal exemption and the requirement that appraisals be subject to appropriate review for compliance with USPAP, are effective on the first day after publication of the final rule in the **Federal Register**.

Additionally, although not required by RCDRIA, the agencies did consider the administrative costs and benefits of the residential appraisal threshold increase while developing the proposal. In designing the scope of the threshold increase, the agencies chose to align the definition of residential real estate transaction with industry practice, regulatory guidance, and the categories used in the Call Report in order to reduce the administrative burden of determining which transactions were exempted by the final rule. The agencies also considered the cost savings that IDIs would experience by obtaining evaluations instead of appraisals and set the threshold at a level designed to provide significant burden relief without sacrificing safety and soundness. Similarly, in requiring evaluations for exempted rural transactions and adding the appraisal review requirement, the agencies considered the administrative burden of these requirements on IDIs consistent with principles of safety and soundness and the public interest.

D. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [106] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes 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 in any one year (adjusted annually for inflation, currently $154 million).[107] As discussed in the OCC's Regulatory Flexibility Act section, the costs associated with the final rule, if any, would be *de minimis.* Therefore, the OCC concludes that the final rule will not result in an expenditure of $154 million or more annually by state, local, and tribal governments, or by the private sector.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing

[103] 12 U.S.C. 4802(a).

[104] *Id.* at 4802(b).

[105] *See supra* note 25.

[106] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[107] The OCC estimates the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2018, which is the most recent available annual data. The deflator was 71.868 in 1995, and 110.382 in 2018, resulting in an inflation adjustment factor of 1.54 (110.382/71.868 = 1.54, and $100 million × 1.54 = $154 million).

12 CFR Part 323

Banks, banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

For the reasons set forth in the joint preamble, the OCC amends part 34 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j—3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 2. Section 34.42 is amended by:
■ a. Revising paragraph (f);
■ b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and
■ c. Adding a new paragraph (k).

The revision and addition read as follows:

§ 34.42 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

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

* * * * *

■ 3. Section 34.43 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Removing the word ''or'' at the end of paragraph (a)(12);
■ c. Removing the period at the end of paragraph (a)(13) and adding ''; or'' in its place;
■ d. Adding paragraph (a)(14); and
■ e. Revising paragraph (d)(3).

The revisions and addition read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

■ 4. Effective January 1, 2020, § 34.43 is further amended by revising paragraph (b) to read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (13), or (14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

■ 5. Effective January 1, 2020. § 34.44 is amended by:
■ a. Republishing the introductory text;
■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and
■ c. Adding a new paragraph (c).

The addition reads as follows:

§ 34.44 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * * * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Federal Reserve Board

For the reasons set forth in the joint preamble, the Board amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 6. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331 *et seq.,* 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 7. Section 225.62 is amended by:
■ a. Revising paragraph (f);
■ b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and
■ c. Adding a new paragraph (k).

The revisions and addition read as follows:

§ 225.62 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

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

* * * * *

■ 8. Section 225.63 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Removing the word ''or'' at the end of paragraph (a)(13);
■ c. Removing the period at the end of paragraph (a)(14) and adding ''; or'' in its place;
■ d. Adding paragraph (a)(15); and
■ e. Revising paragraph (d)(3).

The addition and revisions read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(15) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for

residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

■ 9. Effective January 1, 2010, § 225.63 is further amended by revising paragraph (b) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (14), or (15) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

■ 10. Effective January 1, 2020, § 225.64 is amended by:

■ a. Republishing the introductory text;

■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

■ c. Adding a new paragraph (c).

The addition reads as follows:

§ 225.64 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * * * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Federal Deposit Insurance Corporation

For the reasons set forth in the joint preamble, the FDIC amends part 323 of chapter III of title 12 of the Code of Federal Regulations as follows:

■ 11. The authority citation for part 323 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819(a) (''Seventh'' and ''Tenth''), 1831p–1 and 3331 *et seq.*

■ 12. Section 323.2 is amended by:

■ a. Revising paragraph (f);

■ b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and

■ c. Adding a new paragraph (k).

The revision and addition read as follows:

§ 323.2 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

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

* * * * *

■ 13. Section 323.3 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Removing the word ''or'' at the end of paragraph (a)(12);

■ c. Removing the period at the end of paragraph (a)(13) and adding ''; or'' in its place; and

■ d. Adding paragraph (a)(14); and

■ e. Revising paragraph (d)(3).

The revisions and addition read as follows:

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

■ 14. Effective January 1, 2020. § 323.3 is further amended by revising paragraph (b) to read as follows:

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (13), or (14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

■ 15. Effective January 1, 2020, § 323.4 is amended by

■ a. Republishing the introductory text;

■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

■ c. Adding a new paragraph (c).

The addition reads as follows:

§ 323.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * * * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Dated: August 8, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 23, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 20, 2019.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–21376 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 652

[Docket No. FHWA–2019–0018]

RIN 2125–AF90

Pedestrian and Bicycle Accommodations and Projects; Removal of Obsolete Regulation

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Through this final rule FHWA will remove a regulation that has been superseded by legislation. We are removing sections related to pedestrian and bicycle accommodations and projects. The regulation is no longer necessary, given revisions to applicable provisions of title 23, United States Code (U.S.C.).

DATES: This final rule is effective October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher Douwes, Office of Human Environment (HEPH–10), (202) 366–5013, or via email at *Christopher.Douwes@dot.gov* or David Sett, Office of the Chief Counsel (HCC–30), (404) 562–3676, or via email at *David.Sett@dot.gov*. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online under the docket number noted above through the Federal eRulemaking portal at: *http://www.regulations.gov*. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at: *http://www.archives.gov/federal-register* and the Government Publishing Office's website at: *http://www.gpo.gov/fdsys*.

Background

Over time, various legislative changes have made 23 CFR part 652 obsolete. In addition, the design guidelines described in this regulation no longer constitute best practices, based on the most recent safety and multimodal network research. Therefore, this rulemaking will remove 23 CFR part 652 in its entirety.

This regulation, enacted on March 22, 1984, has been inconsistent with title 23 U.S.C. since the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240, 105 Stat. 1914) was enacted on December 18, 1991. Subsequent surface transportation legislation and implementing regulations have rendered this regulation obsolete, including the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568); the Transportation Equity Act for the 21st Century of 1998 (Pub. L. 105–178, 112 Stat. 107); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) of 2005 (Pub. L. 109–59, 119 Stat. 1144); the Moving Ahead for Progress in the 21st Century Act (MAP–21) of 2012 (Pub. L. 112–141, 126 Stat. 405); and the Fixing America's Surface Transportation (FAST) Act of 2015 (Pub. L. 114–94, 129 Stat. 1312), as well as the Americans with Disabilities Act of 1990 (ADA) (Pub. L. 101–336, 104 Stat. 327). Safety and multimodal network research leading to new planning and design guidelines and practices have added to the inconsistency between this regulation and current practices. The section-by-section analysis describes how each section of part 652 has been superseded.

Section-by-Section Analysis

§ 652.1 Purpose. This section is obsolete. Subsequent law provided broad flexibility to fund pedestrian and bicycle projects without the restrictions in part 652. See discussion of § 652.7 for additional information.

§ 652.3 Definitions. The definitions in this section are not needed because the regulation will be removed.

§ 652.5 Policy. This section is either obsolete or superseded by subsequent laws, regulations, and guidance. Current law in 23 U.S.C. 217 incorporates provisions in this section relating to pedestrian and bicyclist accommodation. The ADA and DOT's implementing regulation in 49 CFR part 27 incorporate accessibility requirements. Planning requirements in 23 U.S.C. 134 and 135 and 23 CFR parts 420 and 450 address issues related to pedestrian and bicycle accommodation, such as assessing current and anticipated traffic and traffic conflicts.

§ 652.7 Eligibility. This section is obsolete because ISTEA and subsequent surface transportation legislation authorized broad eligibility for pedestrian and bicycle projects through Federal highway funding programs including, but not limited to the following:

- Bicycle transportation and pedestrian walkways (23 U.S.C. 217);
- National Highway Performance Program (23 U.S.C. 119);
- Surface Transportation Block Grant Program (23 U.S.C. 133), including the Surface Transportation Program Set-Aside (23 U.S.C. 133(h));
- Highway Safety Improvement Program (23 U.S.C. 148);
- Congestion Mitigation and Air Quality Improvement Program (23 U.S.C. 149);
- Federal Tribal Transportation Program (23 U.S.C. 202);
- Federal Lands Transportation Program (23 U.S.C. 203);
- Federal Lands Access Program (23 U.S.C. 204); and
- Recreational Trails Program (23 U.S.C. 206).

§ 652.9 Federal participation. This section is obsolete because ISTEA and subsequent surface transportation legislation authorized broad eligibility for pedestrian and bicycle projects through Federal highway funding programs as described above. Pedestrian and bicycle projects are now subject to the requirements of the program under which they are funded (such as the minimum Federal share).

§ 652.11 Planning. This section is obsolete because ISTEA and subsequent surface transportation legislation incorporated planning provisions for pedestrian and bicycle projects in 23 U.S.C. 134 and 135, and implementing regulations in 23 CFR parts 420 and 450.

§ 652.13 Design and Construction Criteria.

§ 652.13(a). The American Association of State Highway and Transportation Officials' ''Guide for the Development of New Bicycle Facilities, 1981'' has been superseded by several revisions. Title 23, U.S.C. does not require design standards for pedestrian and bicycle facilities. Section 109 stipulates design requirements for the National Highway System, which are implemented by 23 CFR part 625. Further, new research on pedestrian and bicycle planning, design, construction, and maintenance has led to newer practices for the safe and effective accommodation of pedestrians and bicyclists within the multimodal transportation network. The FHWA considers these documents and other resources when developing guidelines and best practices for pedestrian and bicycle facilities. These documents are available at *https://www.fhwa.dot.gov/environment/bicycle_pedestrian/* and at *https://safety.fhwa.dot.gov/ped_bike/*.

§ 652.13(b). The ADA and DOT's implementing regulations superseded the requirements of § 652.13(b). Curb cut provisions are incorporated into 49 CFR 27.75. The FHWA has published additional guidance, available at *https://www.fhwa.dot.gov/environment/bicycle_pedestrian/* and *https://www.fhwa.dot.gov/accessibility/*.

All substantive requirements and provisions of 23 CFR part 652 have been superseded by or incorporated into subsequent law, regulation, or guidance. Therefore, part 652 is obsolete and may be removed without adversely impacting the ability of FHWA or the State or local transportation departments to carry out the Federal-aid highway program.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the prior notice and opportunity for public comment requirements if it finds, for good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. The issuance of this rule without prior notice and opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(3)(B). Seeking public comment is unnecessary. This action is merely a ministerial action to remove a regulation from the CFR that has been rendered obsolete by the passage of subsequent legislation, and the removal of this regulation will have no substantive impact. The FHWA believes that because the underlying statutory authority for this regulation has substantially changed since adopted, this final rule eliminates any confusion that may be caused by its existence in the CFR. For these reasons, FHWA does not anticipate receiving meaningful comments on a proposal to remove the regulation from the CFR and finds good cause to forgo notice and an opportunity for public comment.

The APA also allows agencies, upon finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 533(d)(3)). For the same reasons discussed above, the Agency believes good cause exists for making this action effective immediately upon publication.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or within the meaning of DOT regulatory policies and procedures. This is a ministerial action to remove an obsolete regulation from the CFR. The removal of this regulation will have no substantive impact or economic impact; therefore, a full regulatory evaluation is not necessary.

This final rule is considered an E.O. 13771 deregulatory action. This final rule repeals a whole part from the Code of Federal Regulations that has been identified as outdated or unnecessary, thus reducing the Department's regulatory footprint. Cost savings associated with this deregulatory action are not quantifiable.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 60l-612), FHWA has evaluated the effects of this final rule on small entities, such as local governments and businesses. This is a ministerial action to remove an obsolete regulation from the CFR. Administration of Federal-aid highway construction projects by small entities will not be affected by the deletion. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has determined that this rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions in this final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $155 million or more in any 1 year (when adjusted for inflation) in 2014 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector. In addition, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132. Since is a ministerial action to remove an obsolete regulation from the CFR, FHWA has determined that this rule does not have federalism implications. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. State and local governments are not directly affected by this action because it is a ministerial action to remove an obsolete regulation from the CFR.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this final rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this final rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that this action does not have any effect on the quality of the human and natural environment because it is a ministerial action to remove an obsolete regulation from the CFR.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under E.O. 13175 and believes that it will not have substantial direct effects on one or more Indian Tribes, does not impose substantial direct compliance costs on Indian Tribal governments, and does not preempt Tribal law. This rule does not impose any direct compliance requirements on Indian Tribal governments nor does it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this action is not a significant energy action under the E.O. and 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.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This action does not effect a taking of private property or otherwise have taking implications under E.O. 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action will not cause an environmental risk to health or safety that may disproportionately affect children.

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 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 in 23 CFR Part 652

Grant programs—transportation, Highways and roads.

Nicole R. Nason,

Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA amends 23 CFR chapter I as follows:

PART 652—[REMOVED AND RESERVED]

■ Under the authority of 23 U.S.C. 315, part 652, consisting of §§ 652.1 through 652.13, is removed and reserved.

[FR Doc. 2019–21685 Filed 10–7–19; 8:45 am]

BILLING CODE 4910–RY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0343; FRL–10000–66–Region 5]

Air Plan Approval; Indiana; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from Indiana regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions. EPA did not receive any adverse comments in response to its July 30, 2019 proposal to approve this submission.

DATES: This final rule is effective on November 7, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0343. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Samantha Panock, 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) 353–8973, *panock.samantha@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

On June 10, 2016, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA to approve its infrastructure SIP for the 2012 annual $PM_{2.5}$ NAAQS. The June 10, 2016 IDEM submittal included a technical analysis of its interstate transport of pollution relative to the 2012 $PM_{2.5}$ NAAQS that demonstrates that current controls are adequate for Indiana to show that it meets prongs one and two of the ''good neighbor'' provision [1] under CAA section 110(a)(2)(D)(i). On July 30, 2019 (84 FR 36848), EPA proposed to approve the portion of the submission dealing with those requirements.

II. What comments did we receive on the proposed action?

Our July 30, 2019 proposed rule provided a 30-day review and comment period. The comment period closed on August 29, 2019. EPA did not receive any comments.

III. What action is EPA taking?

In this action, EPA is approving the portion of Indiana's June 10, 2016, submission certifying that the current Indiana SIP is sufficient to meet the required infrastructure requirements under CAA section 110(a)(2)(D)(i), specifically prongs one and two of the ''good neighbor'' provisions, with respect to the 2012 $PM_{2.5}$ NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

[1] There are four prongs to the Section 110(a)(2)(D)(i) ''good neighbor'' provision, which are: Prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong one); prohibit any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state (prong two); prohibit any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality in another state (prong three); and protect visibility in another state (prong four).

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 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 19, 2019.

Cathy Stepp,

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 § 52.770, the table in paragraph (e) is amended by revising the entry for ''Section 110(a)(2) infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	* *	* *	* *
Section 110(a)(2) infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS.	6/10/2016 and 12/28/2016.	10/8/2019, [Insert **Federal Register** citation].	Fully approved for all CAA elements except the visibility protection requirements of (D)(i)(II).
* *	* *	* *	* *

* * * * *

[FR Doc. 2019–21552 Filed 10–7–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 495

[CMS–1716–CN2]

RIN 0938–AT73

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2020 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the August 16, 2019 issue of the **Federal Register** titled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2020 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals.''

DATES: *Effective date:* This correcting document is effective on October 7, 2019.

Applicability date: The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Donald Thompson and Michele Hudson, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2019–16762 of August 16, 2019 (84 FR 42044) there were a number of technical and typographical errors that are identified and corrected by the Correction of Errors section of this correcting document. The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2019 as if they had been included in the document that appeared in the August 16, 2019 **Federal Register**.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 42190, we inadvertently omitted information about the change in the manufacturer of ZEMDRI™ (Plazomicin).

On page 42191, we made a typographical error in the maximum new technology add-on payment for a case involving the use of GIAPREZA™.

On pages 42208, we made typographical errors in the discussion regarding the substantial clinical improvement criterion and CABLIVI®.

On pages 42264 through 42265, we are correcting technical errors that have come to our attention in the description of certain data relating to the GammaTile™ technology, based on information provided by the applicant.

On page 42338, due to conforming changes discussed in section II.B. of this correcting document, we are correcting the transition budget neutrality factor for the transition wage index policy.

On page 42372, we inadvertently omitted the final Factor 3 of the uncompensated care payment methodology's cost-to-charge ratio (CCR) ''ceiling'' and the number of hospitals trimmed.

On page 42426, we made a typographical error in the discussion of the change related to critical access hospital (CAH) payment for ambulance services.

On pages 42459, 42466, 42472, 42474, and 42504, in the discussion of the Hospital Inpatient Quality Reporting (IQR) Program, we made typographical and technical errors in website and website-related information.

B. Summary of Errors in the Addendum

We are correcting an error in the version 37 ICD–10 MS–DRG assignment for some cases in the historical claims data in the FY 2018 MedPAR files used in the ratesetting for the FY 2020 IPPS/LTCH PPS final rule, which resulted in inadvertent errors in the MS–DRG relative weights (and associated average length-of-stay (LOS)). Additionally, the version 37 MS–DRG assignment and relative weights are used when determining total payments for purposes of all of the budget neutrality factors and the final outlier threshold. As a result, the corrections to the MS–DRG assignment under the ICD–10 MS–DRG Grouper version 37 for some cases in the historical claims data in the FY 2018 MedPAR files and the recalculation of the relative weights directly affected the calculation of total payments and required the recalculation of all the budget neutrality factors and the final outlier threshold.

In addition, as discussed in section II.D. of this correcting document, we made certain technical errors with regard to the calculation of Factor 3 of the uncompensated care payment methodology. Factor 3 is used to determine the total amount of the uncompensated care payment a hospital is eligible to receive for a fiscal year. This amount is then used to calculate the amount of the interim uncompensated care payments a hospital receives per discharge. Per discharge uncompensated care payments are included when determining total payments for purposes of all of the budget neutrality factors and the final outlier threshold. As a result, the revisions made to address these technical errors in the calculation of Factor 3 directly affected the calculation of total payments and required the recalculation of all the budget neutrality factors and the final outlier threshold.

We made an inadvertent error in the Medicare Geographic Classification Review Board (MGCRB) reclassification status of one hospital in the FY 2020 IPPS/LTCH PPS final rule. Specifically, one hospital (CCN 330273) was treated as being reclassified under section 1886(d)(10) of the Act; however, its MGCRB reclassification had been withdrawn. In addition, we made an inadvertent error in the application of the rural floor to one hospital (CCN 220016), in that we assigned this hospital the rural wage index rather than the rural floor (Note: As finalized in the FY 2020 IPPS/LTCH PPS final rule (84 FR 42332 through 42336) the calculation of the rural floor does not include the wage data of urban hospitals reclassified as rural under section 1886(d)(8)(E) of the Act (as implemented at § 412.103).) We also made inadvertent errors related to the application of the out-migration adjustment under section 1886(d)(13) of the Act. Specifically, in the FY 2020 IPPS/LTCH PPS final rule, we inadvertently applied the out-migration adjustment to hospitals that received an MGCRB reclassification to their home area. Additionally, the final FY 2020 IPPS wage index with reclassification is used when determining total payments for purposes of all budget neutrality factors (except for the MS–DRG reclassification and recalibration budget neutrality factor and the wage index budget neutrality adjustment factor) and the final outlier threshold.

Due to the correction of the combination of errors listed previously (corrections to the MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of

the relative weights and average length of stay, revisions to Factor 3 of the uncompensated care payment methodology, the correction to the MGCRB reclassification status of one hospital, correction of the application of the rural floor to one hospital, and the correction in the application of the out-migration adjustment to certain hospitals with a geographic reclassification), we recalculated all IPPS budget neutrality adjustment factors, the fixed-loss cost threshold, the final wage indexes (and geographic adjustment factors (GAFs)), and the national operating standardized amounts and capital Federal rate. (We note there was no change to the rural community hospital demonstration program budget neutrality adjustment resulting from the correction of this combination of errors.) Therefore, we made conforming changes to the following:

- On pages 42621 and 42636, the MS–DRG reclassification and recalibration budget neutrality adjustment factor.
- On page 42621, the reclassification hospital budget neutrality adjustment. (We note that although we recalculated the updated wage index budget neutrality adjustment, that factor did not change as a result of the recalculation.)
- On page 42622, the rural floor budget neutrality adjustment and the lowest quartile wage index budget neutrality adjustment.
- On page 42623, the transition budget neutrality adjustment.
- On page 42625, the calculation of the estimated percentage of FY 2020 capital outlier payments, the estimated total Federal capital payments and the estimated capital outlier payments.
- On page 42630, the calculation of the outlier fixed-loss cost threshold, total operating Federal payments, total operating outlier payments, the estimated percentage of capital outlier payments, the outlier adjustment to the capital Federal rate and the related discussion of the percentage estimates of operating and capital outlier payments.
- On pages 42632 through 42634, the table titled ''Changes from FY 2019 Standardized Amounts to the FY 2020 Standardized Amounts''.

On page 42624, we inadvertently omitted the discussion of incorporating a projection of operating outlier payment reconciliations for the FY 2020 outlier threshold calculation.

On page 42632, in the table titled ''Changes from FY 2019 Standardized Amounts to the FY 2020 Standardized Amounts'', we are also correcting the typographical errors in the Nonlabor percentage (If Wage Index is Greater Than 1.0000) and in the FY 2020 Update factor.

On pages 42637 through 42640, in our discussion of the determination of the Federal hospital inpatient capital-related prospective payment rate update, due to the recalculation of the GAFs, we have made conforming corrections to the increase in the capital Federal rate, the GAF/DRG budget neutrality adjustment factors, the capital Federal rate, and the outlier adjustment to the capital Federal rate and the outlier threshold (as discussed previously), along with certain statistical figures (for example, percent change) in the accompanying discussions. Also, as a result of these errors we have made conforming corrections in the table showing the comparison of factors and adjustments for the FY 2019 capital Federal rate and FY 2020 capital Federal rate.

On page 42641, we made typographical errors in the LTCH standard Federal payment rate.

On page 42648, we are making conforming changes to the fixed-loss amount for FY 2020 site neutral payment rate discharges, and the high-cost outlier (HCO) threshold (based on the corrections to the IPPS fixed-loss amount discussed previously).

On pages 42651 and 42652, we are making conforming corrections to the national adjusted operating standardized amounts and capital standard Federal payment rate (which also include the rates payable to hospitals located in Puerto Rico) in Tables 1A, 1B, 1C, and 1D as a result of the conforming corrections to certain budget neutrality factors and the outlier threshold previously described.

On page 42652, we made a typographical error in the LTCH PPS standard Federal payment rate (reduced update) in Table 1E.

C. Summary of Errors in the Appendices

On pages 42657 through 42662, 42664 through 42669, and 42684 through 42686 in our regulatory impact analyses, we have made conforming corrections to the factors, values, and tables and accompanying discussion of the changes in operating and capital IPPS payments for FY 2020 and the effects of certain IPPS budget neutrality factors as a result of the technical errors that lead to changes in our calculation of the operating and capital IPPS budget neutrality factors, outlier threshold, final wage indexes, operating standardized amounts, and capital Federal rate (as described in section II.B. of this correcting document).

These conforming corrections include changes to the following tables:

- On pages 42657 through 42660, the table titled ''Table I—Impact Analysis of Changes to the IPPS for Operating Costs for FY 2020''.
- On pages 42664 through 42666, the table titled ''Comparison of FY 2019 and FY 2020 IPPS Estimated Payments Due to Rural Floor with National Budget Neutrality''.
- On pages 42668 through 42669, the table titled ''Table II—Impact Analysis of Changes for FY 2020 Acute Care Hospital Operating Prospective Payment System (Payments per discharge)''.
- On pages 42685 through 42686, the table titled ''Table III—Comparison of Total Payments per Case [FY 2019 payments compared to FY 2020 payments]''.

On pages 42671 through 42675, we are correcting the discussion of the ''Effects of the Changes to Medicare DSH and Uncompensated Care Payments for FY 2020'' for purposes of the Regulatory Impact Analysis in Appendix A of the FY 2020 IPPS/LTCH PPS final rule, including the table titled ''Modeled Uncompensated Care Payments for Estimated FY 2020 DSHs by Hospital Type: Model Uncompensated Care Payments ($ in Millions)—from FY 2019 to FY 2020'' on pages 42672 through 42674, in light of the corrections discussed in section II.D. of this correcting document.

D. Summary of Errors in and Corrections to Files and Tables Posted on the CMS website

We are correcting the errors in the following IPPS tables that are listed on page 42651 of the FY 2020 IPPS/LTCH PPS final rule and are available on the internet on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.*

The tables that are available on the internet have been updated to reflect the revisions discussed in this correcting document.

Table 2—Case-Mix Index and Wage Index Table by CCN–FY 2020. The correction of the error (as discussed in section II.B. of this correcting document) related to one hospital's MGCRB reclassification status, the correction of the application of the rural floor to one hospital, and the correction of the application of the out-migration adjustment to hospitals that reclassified to their home area necessitated the recalculation of the FY 2020 wage indexes. Also, the corrections to the version 37 MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of the

relative weights and ALOS (as discussed in section II.B. of this correcting document), corrections to Factor 3 of the uncompensated care payment methodology, and recalculation of the FY 2020 wage indexes necessitated the recalculation of the rural floor budget neutrality factor (as discussed in section II.B. of this correcting document). Therefore, we are correcting the values for all hospitals in the columns titled ''FY 2020 Wage Index Prior to Quartile and Transition'', ''FY 2020 Wage Index With Quartile'', and ''FY 2020 Wage Index With Quartile and Cap''.

For the hospital (CCN 330273) for which we are correcting its MGCRB reclassification status (as discussed in section II.B. of this correcting document), we are also correcting the columns titled ''Reclassified/ Redesignated CBSA'' and ''MGCRB Reclass''. For the hospitals that reclassified to their home area for which we inadvertently applied the out-migration adjustment, as discussed in section II.B. of this correcting document), we are also correcting the column titled ''Out-Migration Adjustment''.

Table 3.—Wage Index Table by CBSA—FY 2020. Corrections to the version 37 MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of the relative weights and ALOS, corrections to Factor 3 of the uncompensated care payment methodology, and the correction of the reclassification, rural floor application and outmigration adjustment errors (discussed in section II.B. of this correcting document) necessitated the recalculation of the rural floor budget neutrality factor and the FY 2020 wage indexes (as discussed in section II.B. of this correcting document). Therefore, we are making corresponding changes to the wage indexes and GAFs of all CBSAs listed in Table 3. Specifically, we are correcting the values and flags in the columns titled ''Wage Index'', ''GAF'', ''Reclassified Wage Index'', ''Reclassified GAF'', ''State Rural Floor'', ''Eligible for Rural Floor Wage Index'', ''Pre-Frontier and/or Pre-Rural Floor Wage Index'', ''Reclassified Wage Index Eligible for Frontier Wage Index'', ''Reclassified Wage Index Eligible for Rural Floor Wage Index'', and ''Reclassified Wage Index Pre-Frontier and/or Pre-Rural Floor''.

Additionally, some of the labels for the area names of the rural CBSAs were displayed incorrectly (the area name did not correspond to the CBSA code in the column titled ''CBSA''). Therefore, we are correcting the column titled ''Area Name'' for the affected CBSAs. Also, there were technical errors in the calculation of the FY 2020 average hourly wage and 3-year average hourly wage for some CBSAs, and therefore, we are correcting the columns titled ''FY 2020 Average Hourly Wage'' and ''3-Year Average Hourly Wage (2018, 2019, 2020)'' for the affected CBSAs. Specifically, we inadvertently counted the salaries and hours of multicampus hospitals twice when calculating the FY 2020 average hourly wage and 3-year average hourly wage for the CBSAs that include those hospitals, and some providers were inadvertently not assigned to a CBSA when we calculated the 3-year average hourly wage. We also inadvertently did not display the wage index of 1.0000 in the state rural floor for some states that are eligible for the Frontier wage index. Therefore, we are correcting the column titled ''State Rural Floor'' for the affected CBSAs. (Note: As stated in the FY 2020 IPPS/ LTCH PPS Final Rule (84 FR 42312), section 10324 of Public Law 111–148 requires that hospitals in frontier States cannot be assigned a wage index of less than 1.0000.)

Table 5.—List of Medicare Severity Diagnosis-Related Groups (MS–DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay—FY 2020. We are correcting this table to reflect the recalculation of the relative weights, geometric average length-of-stay (LOS), and arithmetic mean LOS as a result of the corrections to the version 37 MS–DRG assignment for some cases in the historical claims data used in the calculations (as discussed in section II.B. of this correcting document).

Table 7B.—Medicare Prospective Payment System Selected Percentile Lengths of Stay: FY 2018 MedPAR Update—March 2019 GROUPER Version 37 MS–DRGs. We are correcting this table to reflect the recalculation of the relative weights, geometric average length-of-stay (LOS), and arithmetic mean LOS as a result of the corrections to the version 37 MS–DRG assignment for some cases in the historical claims data used in the calculations (as discussed in section II.B. of this correcting document).

Table 18.—FY 2020 Medicare DSH Uncompensated Care Payment Factor 3. We are correcting this table to reflect corrections to the Factor 3 calculations for purposes of determining uncompensated care payments for the FY 2020 IPPS/LTCH PPS final rule for the following reasons:

- To correct the Factor 3s that were computed for hospitals where a MAC had accepted an amended report, reopened a report, and/or adjusted uncompensated care cost data on a report, but the corrected uncompensated care data were inadvertently omitted from the June 30, 2019 extract of the Healthcare Cost Report Information System (HCRIS).
- To correct for the inadvertent inclusion of terminated hospitals in the Factor 3 calculations.

We are revising Factor 3 for all hospitals to correct these errors. We are also revising the amount of the total uncompensated care payment calculated for each DSH-eligible hospital. The total uncompensated care payment that a hospital receives is used to calculate the amount of the interim uncompensated care payments the hospital receives per discharge; accordingly, we have also revised these amounts for all DSH-eligible hospitals. Per discharge uncompensated care payments are included when determining total payments for purposes of all of the budget neutrality factors and the final outlier threshold. As a result, these corrections to uncompensated care payments impacted the calculation of all the budget neutrality factors as well as the outlier fixed-loss cost threshold. These corrections will be reflected in Table 18 and the Medicare DSH Supplemental Data File. In section IV.C. of this correcting document, we have made corresponding revisions to the discussion of the ''Effects of the Changes to Medicare DSH and Uncompensated Care Payments for FY 2020'' for purposes of the Regulatory Impact Analysis in Appendix A of the FY 2020 IPPS/LTCH PPS final rule to reflect the corrections discussed previously.

We also are correcting the errors in the IPPS files described below that are available on the internet on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/MS-DRG-Classifications-and-Software.html.* The files that are available on the internet have been updated to reflect the corrections discussed in this correcting document.

We are correcting the erroneous designation of the following ten ICD–10–CM diagnosis codes as a HAC within HAC 05: Falls and Trauma for FY 2020 in the ICD–10 MS–DRG Definitions Manual Version 37 Appendix I Hospital Acquired Conditions (HACs) List and the ICD–10 MS–DRG Grouper Mainframe Software Version 37: S02.121K (Fracture of orbital roof, right side, subsequent encounter for fracture with nonunion); S02.122K (Fracture of orbital roof, left side, subsequent encounter for fracture with nonunion); S02.129K (Fracture of orbital roof,

unspecified side, subsequent encounter for fracture with nonunion); S02.831K (Fracture of medial orbital wall, right side, subsequent encounter for fracture with nonunion); S02.832K (Fracture of medial orbital wall, left side, subsequent encounter for fracture with nonunion); S02.839K (Fracture of medial orbital wall, unspecified side, subsequent encounter for fracture with nonunion); S02.841K (Fracture of lateral orbital wall, right side, subsequent encounter for fracture with nonunion); S02.842K (Fracture of lateral orbital wall, left side, subsequent encounter for fracture with nonunion); S02.849K (Fracture of lateral orbital wall, unspecified side, subsequent encounter for fracture with nonunion) and S02.85XK (Fracture of orbit, unspecified, subsequent encounter for fracture with nonunion). We have corrected the ICD–10 MS–DRG Definitions Manual Version 37 and the ICD–10 MS–DRG Grouper Mainframe Software Version 37 to correctly reflect that these diagnosis codes are not defined as HACs for MS–DRG assignment for FY 2020.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical and typographical errors in the preamble, addendum, payment rates, tables, and appendices included or referenced in the FY 2020 IPPS/LTCH PPS final rule, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the FY 2020 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2020 IPPS/LTCH PPS final rule accurately reflects our methodologies and policies. Furthermore, such procedures would be unnecessary, as we are not making substantive changes to our methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the FY 2020 IPPS/LTCH PPS final rule accurately reflects these methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Rule Doc. 2019–16762 of August 16, 2019 (84 FR 42044), we are making the following corrections:

A. Corrections of Errors in the Preamble

1. On page 42190, second column, second full paragraph, lines 1 through 4, the sentence ''Achaogen, Inc. submitted an application for new technology add-on payments for ZEMDRI™ (Plazomicin) for FY 2019.'' is corrected to read ''Achaogen, Inc. submitted an application for new technology add-on payments for ZEMDRI™ (Plazomicin) for FY 2019 (we note that Cipla USA Inc. has since acquired ZEMDRI™ (Plazomicin) from Achaogen Inc.)''

2. On page 42191, third column, first partial paragraph, line 2, the figure ''$4,083.75'' is corrected to read ''$1,950.''

3. On page 42208,

a. First column, second full paragraph, line 18 (last line), the term ''comparing'' is corrected to read ''compared''.

b. Second column, fifth full paragraph, line 1, the phrase ''all the'' is corrected to read ''all of the''.

4. On page 42264, third column, first full paragraph, lines 12 through 16, the sentence ''The applicant stated that they collaborated with a biostatistics firm to advise to ensure the analysis of their data meets the highest standards.'' is corrected to read ''The applicant stated that they collaborated with a biostatistics firm to ensure the analysis of their data meets the highest standards.''.

5. On page 42265,

a. First column,

i. First full paragraph,

A. Line 8, the phrase ''performed on 79 patients'' is corrected to read ''performed on 74 patients with 79 tumors''.

B. Lines 30 through 33, the sentence ''Based on the data, there was no statistically significant difference between the control arm treatment and GammaTile™ treatment.'' is corrected to read ''There was a statistically significant difference between the control arm treatment and GammaTile™ treatment for patients with recurrent meningioma and brain metastases and no statistically significant difference between the control arm treatment and GammaTile™ treatment for patients with recurrent high-grade glioma.''.

ii. Second paragraph, lines 2 and 3, the phrase ''the initial 20 of 79 patients'' is corrected to read ''the initial 19 patients (with 20 tumors) of the 74 patients''.

b. Second column, first partial paragraph, lines 17 through 33, the sentences ''While we acknowledge the difficulty in establishing randomized control groups in studies involving recurrent brain tumors, after careful review of all data received to date, we find the data did not show a statistically significant difference between the time to first recurrence in the control arm in comparison to the time to second recurrence in the GammaTile™ treatment arm. Based on the information stated above, we are unable to make a determination that GammaTile™ technology represents a substantial

clinical improvement over existing therapies.'' are corrected to read ''While we acknowledge the difficulty in establishing randomized control groups in studies involving recurrent brain tumors, based on the information stated above, we are unable to make a determination that GammaTile™ technology represents a substantial clinical improvement over existing therapies.''.

6. On page 42338, second column, first full paragraph, line 14, the figure ''0.998838'' is corrected to read ''0.998835''.

7. On page 42379, second column, first full paragraph, the last line is corrected by adding the parenthetical sentence ''(For the final rule, this trim removed 5 hospitals that have a CCR above the calculated ceiling of 1.082 for FY 2015 cost reports.)''.

8. On page 42426, second column, first full paragraph, line 9, the phrase ''its community'' is corrected to read ''its community.''.

9. On page 42459, first column, footnote paragraph (footnote 395), the website ''*https://ecqi.healthit.gov/ecqi-tools-key-resources/content/vsac*)'' is corrected to read ''*https://ecqi.healthit.gov/tool/vsac*''.

10. On page 42466, second column, footnote paragraph (footnote 447), the website title ''2015 Considerations for Implementing Measures in Federal Programs: Hospitals'' is corrected to read ''Spreadsheet of MAP 2015 Final Recommendations''.

11. On page 42472, third column, footnote paragraph (footnote 473), the published date ''2013'' is corrected to read ''2015''.

12. On page 42474, second column, footnote paragraph (footnote 478), the website title ''2015 Considerations for Implementing Measures in Federal Programs: Hospitals'' is corrected to read ''Spreadsheet of MAP 2015 Final Recommendations''.

13. On page 42504, third column, footnote paragraph (footnote 663), the website ''*https://ecqi.healthit.gov/content/about-ecqi*'' is corrected to read ''*https://ecqi.healthit.gov/about-ecqi.*''.

B. Correction of Errors in the Addendum

1. On page 42621,

a. First column, last bulleted paragraph, line 17 and line 22, the figure ''0.997649'' is corrected to read ''0.996859''.

b. Third column, last paragraph, line 11, the figure ''0.985425'' is corrected to read ''0.985447''.

2. On page 42622,

a. First column, last full paragraph, line 3, the figure ''0.997081'' is corrected to read ''0.997073''.

b. Third column, first bullet, last line, the figure ''0.997987'' is corrected to read ''0.997984''.

3. On page 42623, first column, first full paragraph, line 5, the figure ''0.998838'' is corrected to read ''0. 998835''.

4. On page 42624, second column,

a. Second full paragraph (immediately under the section heading ''(a) Incorporating a Projection of Outlier Payment Reconciliations for the FY 2020 Outlier Threshold Calculation''), the sentence ''We proposed the following methodology to incorporate a projection of outlier payment reconciliations for the FY 2020 outlier threshold calculation.'' is corrected to read ''We proposed the following methodology to incorporate a projection of operating outlier payment reconciliations for the FY 2020 outlier threshold calculation.''.

b. Before the second partial paragraph which begins with the phrase ''Step 1.'' the language is corrected by adding the following paragraphs to read as follows:

''*Step 1.*—Use the Federal FY 2014 cost reports for hospitals paid under the IPPS from the most recent publicly available quarterly HCRIS extract available at the time of development of the proposed rule and final rules, and exclude sole community hospitals (SCHs) that were paid under their hospital-specific rate (that is, if Worksheet E, Part A, Line 48 is greater than Line 47 in the applicable columns.) In the proposed rule, we stated that we used the December 2018 HCRIS extract for the proposed rule and that we expected to use the March 2019 HCRIS extract for the FY 2020 final rule.

Step 2.—Calculate the aggregate amount of historical total of operating outlier reconciliation dollars (Worksheet E, Part A, Line 2.01) using the Federal FY 2014 cost reports from Step 1.

Step 3.—Calculate the aggregate amount of total Federal operating payments using the Federal FY 2014 cost reports from Step 1. The total Federal operating payments consist of the Federal payments (Worksheet E, Part A, Line 1.01 and Line 1.02, plus Line 1.03 and Line 1.04), outlier payments (Worksheet E, Part A, Line 2 and Line 2.02), and the outlier reconciliation payments (Worksheet E, Part A, Line 2.01). We note that a negative amount on Worksheet E, Part A, Line 2.01 for outlier reconciliation indicates an amount that was owed by the hospital, and a positive amount indicates this amount was paid to the hospital.

Step 4.—Divide the amount from Step 2 by the amount from Step 3 and multiply the resulting amount by 100 to produce the percentage of total operating outlier reconciliation dollars to total Federal operating payments for FY 2014. This percentage amount would be used to adjust the outlier target for FY 2020 as described in Step 5.

Step 5.—Because the outlier reconciliation dollars are only available on the cost reports, and not in the Medicare claims data in the MedPAR file used to model the outlier threshold, we proposed to target 5.1 percent minus the percentage determined in Step 4 in determining the outlier threshold. Using the FY 2014 cost reports based on the December 2018 HCRIS extract (as used for the proposed rule), because the aggregate outlier reconciliation dollars from Step 2 are negative, we targeted an amount higher than 5.1 percent for outlier payments for FY 2020 under our proposed methodology.

For the FY 2020 proposed rule, based on December 2018 HCRIS, 16 hospitals had an outlier reconciliation amount recorded on Worksheet E, Part A, Line 2.01 for total operating outlier reconciliation dollars of negative $24,433,087 (Step 2). The total Federal operating payments based on the December 2018 HCRIS was $82,969,541,296 (Step 3). The ratio (Step 4) was a negative 0.029448 percent, which, when rounded to the second digit, was negative 0.03 percent. Therefore, for FY 2020, we proposed to incorporate a projection of outlier reconciliation dollars by targeting an outlier threshold at 5.13 percent [5.1 percent − (− 0.03 percent)]. When the percentage of operating outlier reconciliation dollars to total Federal operating payments is negative (such is the case when the aggregate amount of outlier reconciliation is negative), the effect is a decrease to the outlier threshold compared to an outlier threshold that is calculated without including this estimate of operating outlier reconciliation dollars. In section II.A.4.i.(2) of the Addendum to the proposed rule, we provided the FY 2020 outlier threshold as calculated for the proposed rule both with and without including this proposed percentage estimate of operating outlier reconciliation.

As explained earlier, we stated in the proposed rule that we believe this is an appropriate method to include outlier reconciliation dollars in the outlier model because it uses the total outlier reconciliation dollars based on historic data rather than predicting which specific hospitals will have outlier payments reconciled for FY 2020. However, we stated we would continue to use a 5.1 percent target (or an outlier offset factor of 0.949) in calculating the outlier offset to the standardized

amount. In the past, the outlier offset was six decimals because we targeted and set the threshold at 5.1 percent by adjusting the standardized amount by the outlier offset until operating outlier payments divided by total operating Federal payments plus operating outlier payments equaled approximately 5.1 percent (this approximation resulted in an offset beyond three decimals). However, we stated that under our proposed methodology, we believed a three decimal offset of 0.949 reflecting 5.1 percent is appropriate rather than the unrounded six decimal offset that we have calculated for prior fiscal years. Specifically, as discussed in section II.A.5. of the Addendum in the proposed rule, we proposed to determine an outlier adjustment by applying a factor to the standardized amount that accounts for the projected proportion of total estimated FY 2020 operating Federal payments paid as outliers. Our proposed modification to the outlier threshold methodology was designed to adjust the total estimated outlier payments for FY 2020 by incorporating the projection of negative outlier reconciliation. That is, under our proposal, total estimated outlier payments for FY 2020 would be the sum of the estimated FY 2020 outlier payments based on the claims data from the outlier model and the estimated FY 2020 total operating outlier reconciliation dollars. We stated that we believe the proposed methodology would more accurately estimate the outlier adjustment to the standardized amount by increasing the accuracy of the calculation of the total estimated FY 2020 operating Federal payments paid as outliers. We stated that in other words, the net effect of our outlier proposal to incorporate a projection for outlier reconciliation dollars into the threshold methodology would be that FY 2020 outlier payments (which include the estimated recoupment percentage for FY 2020 calculated for the proposed rule of 0.03 percent) would be 5.1 percent of total operating Federal payments plus total outlier payments. Therefore, we stated the operating outlier offset to the standardized amount is 0.949 $(1 - 0.051)$.

In the FY 2020 IPPS/LTCH PPS proposed rule, we stated that, although we were not making any proposals with respect to the methodology for FY 2021 and subsequent fiscal years, the above-described proposed methodology could advance by 1 year the cost reports used to determine the historical outlier reconciliation (for example, for FY 2021, the FY 2015 outlier reconciliations would be expected to be complete). We stated that we were considering additional options in order to have available more recent estimates of outlier reconciliation for future rulemaking.

We invited public comment on our proposed methodology for projecting the estimate of outlier reconciliation and incorporating that estimate into the modeling for the fixed-loss cost outlier threshold.

Comment: Some commenters supported the methodology and stated that they were able to replicate the CMS calculation of the adjustment based on the outlier reconciliations reported in the cost reports. A commenter requested that CMS confirm the steps taken in calculating the reconciliation amount included the following steps: (1) Exclude Maryland hospitals from the analysis; (2) base the list of IPPS providers on all Medicare participating providers in FY 2014 and do not restrict consideration to only current IPPS providers; (3) if a provider has multiple cost reports, use all of them; and (4) if there were multiple columns for the line in the cost report, only the first column should be used. The commenter also requested that CMS describe any other steps it took in the analysis.

Some commenters raised concerns with the completeness of outlier reconciliations and/or finalized cost reports. The commenters recommended that an earlier cost report year (FY 2012 or FY 2013) be used instead of the FY 2014 cost report year as proposed. One commenter stated that in their review of FY 2012 through FY 2014 cost reports for completeness, there were no changes in HCRIS to the FY 2012 cost reports during the last year, yet their analysis of FY 2013 cost report showed several changes in 2019. The commenter was concerned that the FY 2014 reconciliations in the cost report are still subject to change and suggested CMS use FY 2012 data for purposes of the FY 2020 outlier threshold calculation. Another commenter that recommended CMS use FY 2013 cost reports stated that FY 2013 cost reports likely provided more audited cost reports, even though they were less current.

Response: We thank the commenters for their support and input on the proposed methodology.

Regarding the commenter who requested clarification on specific methodology steps, as noted in the proposed rule, in Step 1, we used the Federal FY 2014 cost reports for hospitals paid under the IPPS, and therefore excluded hospitals not paid under the IPPS, such as Maryland hospitals and cancer hospitals. Also, we did not restrict the data included to only current IPPS providers; specifically, we used all cost reports with a begin date in the Federal fiscal year 2014 including if a hospital had multiple cost reports during the fiscal year. For the request for clarification on multiple columns for a line in the cost report, when there were multiple columns available and the provider was paid under the IPPS for that period of the cost report, then we believe it is appropriate to use multiple columns, as the multiple columns are needed to fully represent the relevant IPPS payment amounts. For example, where there were geographic reclassifications in different periods of the cost report and/or SCH/MDH status in different periods of the cost report, which are two of the reasons for multiple columns, we believe all such columns should be used to determine the IPPS payment amounts. We note the proposed rule calculation inadvertently did not incorporate the multiple columns, however these multiple columns have been used in projecting the estimated outlier reconciliation for this final rule.

Regarding the comments on using an earlier cost report year instead of the proposed FY 2014, we note that the proposed rule used data from 16 hospitals and the final rule is using data from 22 hospitals. As stated above, we believe that many of the reasons aside from outlier reconciliation that resulted in a delay in the cost reports being final settled have now been resolved. Additionally, as stated above, we believe that the updated FY 2014 cost reports for the final rule provide the most recent and complete available data to project the estimate of operating outlier reconciliation, while the commenters' recommended approach would use data for earlier years. We also note that the March 2019 HCRIS, includes approximately 92 percent of finalized FY 2014 cost reports while the March 2019 HCRIS for FY 2013 includes approximately 95 percent of finalized FY 2013 cost reports. Given the very small percentage variance in finalized cost reports from FY 2013 to 2014 in the March 2019 HCRIS, we believe it would be more accurate to use the more recent data based on FY 2014 cost reports. Given the amount of time that has passed since FY 2012 cost reports, which is 8 years prior to the upcoming fiscal year, we believe any additional incremental increase in the percentage of finalized cost reports for FY 2012 is outweighed by using the more recent FY 2014 cost reports because they would more accurately project the estimate of operating outlier reconciliation.

The March 2019 HCRIS contained data for 20 hospitals. While we proposed to use the March 2019 HCRIS extract to calculate the reconciliation adjustment for this FY 2020 IPPS final rule, data for two additional outlier reconciliations were made available to CMS outside of the March 2019 HCRIS update. We believe including these two hospitals will lend additional accuracy to project the estimate of operating outlier reconciliation used in the calculation of the outlier threshold. Therefore, in order to use the most complete data for FY 2014 cost reports, we are using the March 2019 HCRIS extract, supplemented by these two additional hospitals' data for this FY 2020 IPPS final rule. We expect to use the March HCRIS for the final rule for future rulemaking, as we generally expect historical cost reports for the applicable fiscal year to be available by March. The following table shows the March 2019 HCRIS with the addition of two hospitals' outlier reconciliation data for this final rule

	Data From March HCRIS 2019	*Data From March HCRIS 2019 with Supplemental Data
Total Operating Outlier Reconciliation (Step 2):	$28,985,878	$35,136,843
Total Federal Operating Payments (Step 3):	$84,045,334,213	$84,051,485,178
Rounded Ratio (Step 4):	0.03	0.04

*Supplemental data for provider numbers 450855 and 450877 have had the estimated outlier reconciliation amounts added to the numerator and denominator.

After consideration of the comments received, and for the reasons discussed in the proposed rule and in this final rule, we are finalizing the methodology described above for incorporating the outlier reconciliation in the outlier threshold calculation. Therefore, for this final rule we used the same steps described above and in the proposed rule to incorporate a projection of operating outlier payment reconciliations for the calculation of the FY 2020 outlier threshold calculation.

For this FY 2020 final rule, based on the March 2019 HCRIS and supplemental data for two hospitals, 22 hospitals had an outlier reconciliation amount recorded on Worksheet E, Part A, Line 2.01 for total operating outlier reconciliation dollars of negative $35,136,843 (Step 2). The total Federal operating payments based on the March 2019 HCRIS is $84,051,485,178 (Step 3). The ratio (Step 4) is a negative 0.041804 percent, which, when rounded to the second digit, is negative 0.04 percent. Therefore, for FY 2020, using the finalized methodology, we incorporated a projection of outlier reconciliation dollars by targeting an outlier threshold at 5.14 percent [5.1 percent − (− .04 percent)]. As noted above, when the percentage of operating outlier reconciliation dollars to total Federal operating payments is negative (such is the case when the aggregate amount of outlier reconciliation is negative), the effect is a decrease to the outlier threshold compared to an outlier threshold that is calculated without including this estimate of operating outlier reconciliation dollars. In section II.A.4.i.(2) of this Addendum of this final rule, we provide the FY 2020 outlier threshold as calculated both with and without including this percentage estimate of operating outlier reconciliation.

(b) Reducing the FY 2020 Capital Standard Federal Rate by an Adjustment Factor To Account for the Projected Proportion of Capital IPPS Payments Paid as Outliers

We establish an outlier threshold that is applicable to both hospital inpatient operating costs and hospital inpatient capital related costs (58 FR 46348). Similar to the calculation of the adjustment to the standardized amount to account for the projected proportion of operating payments paid as outlier payments, as discussed in greater detail in section III.A.2. of the Addendum in the proposed rule and this final rule, we proposed to reduce the FY 2020 capital standard Federal rate by an adjustment factor to account for the projected proportion of capital IPPS payments paid as outliers. The regulations in 42 CFR 412.84(i)(4) state that any outlier reconciliation at cost report settlement will be based on operating and capital CCRs calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. As such, any reconciliation also applies to capital outlier payments. As part of our proposal for FY 2020 to incorporate into the outlier model the total outlier reconciliation dollars from the most recent and most complete fiscal year cost report data, we also proposed to adjust our estimate of FY 2020 capital outlier payments to incorporate a projection of capital outlier reconciliation payments when determining the adjustment factor to be applied to the capital standard Federal rate to account for the projected proportion of capital IPPS payments paid as outliers. To do so, we proposed to use the following methodology, which generally parallels the methodology to incorporate a projection of operating outlier reconciliation payments for the FY 2020 outlier threshold calculation.''.

5. On page 42625, lower fourth of the page (after the table), second column, partial paragraph,

a. Line 5, the figure ''5.47'' is corrected to read ''5.45''.

b. Line 7, the figure ''$441,745,478'' is corrected read ''$440,250,855''.

c. Line 8, the figure ''$441,745,478'' is corrected to read ''$440,250,855''.

d. Line 10, the figure ''$8,077,508,094'' is corrected to read ''$8,077,323,420''.

6. On page 42630,

a. Top third of the page,

i. First column, third paragraph, line 11, the figure ''$26,473'' is corrected to read ''$26,552''.

ii. Second column, first partial paragraph,

A. Line 2, the figure ''$91,413,886,336'' is corrected to read ''$91,232,894,870''.

B. Line 3, the figure ''$4,943,282,951'' is corrected to read ''$4,943,522,543''.

C. Line 17, the figure ''$26,662'' is corrected to read ''$26,763''.

D. Line 24, the figure ''$26,473'' is corrected to read ''$26,552''.

iii. Third column, first partial paragraph, lines 8 through 15, the sentence ''We project that the threshold for FY 2020 of $26,473 (which reflects our methodology to incorporate an estimate of outlier reconciliations) will result in outlier payments that will

equal 5.1 percent of operating DRG payments and 5.42 percent of capital payments based on the Federal rate.'' is corrected to read ''We project that the threshold for FY 2020 of $26,552 (which reflects our methodology to incorporate an estimate of operating outlier reconciliations) will result in outlier payments that will equal 5.1 percent of operating DRG payments and we estimate that capital outlier payments will equal 5.37 percent of capital payments based on the Federal rate (which reflects our methodology discussed above to incorporate an estimate of capital outlier reconciliations).

b. Middle of the page, the following the untitled table is corrected to read as follows:

	Operating Standardized Amounts	**Capital Federal Rate***
National	0.949	0.946296

*The adjustment factor for the capital Federal rate includes an adjustment to the estimated percentage of FY 2020 capital outlier payments for capital outlier reconciliation, as discussed above and in section II.A.4.j.(1) in the Addendum to this final rule.

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7. On pages 42632 through 42634, the table titled ''CHANGES FROM FY 2019 STANDARDIZED AMOUNTS TO THE FY 2020 STANDARDIZED AMOUNTS'', is corrected to read as follows:

CHANGES FROM FY 2019 STANDARDIZED AMOUNTS TO THE FY 2020 STANDARDIZED AMOUNTS

	Hospital Submitted Quality Data and is a Meaningful EHR User	Hospital Submitted Quality Data and is NOT a Meaningful EHR User	Hospital Did NOT Submit Quality Data and is a Meaningful EHR User	Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User
FY 2020 Base Rate after removing: 1. FY 2019 Geographic Reclassification Budget Neutrality (0. 0.985335) 2. FY 2019 Operating Outlier Offset (0.948999)	If Wage Index is Greater Than 1.0000: Labor (68.3%): $4,126.19 Nonlabor (31.7%): $1,915.09	If Wage Index is Greater Than 1.0000: Labor (68.3%): $4,126.19 Nonlabor (31.7%): $1,915.09	If Wage Index is Greater Than 1.0000: Labor (68.3%): $4,126.19 Nonlabor (31.7%): $1,915.09	If Wage Index is Greater Than 1.0000: Labor (68.3%): $4,126.19 Nonlabor (31.7%): $1,915.09
3. FY 2019 Rural Demonstration Budget Neutrality Factor (0.999467)	If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,745.59 Nonlabor (38%): $2,295.69	If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,745.59 Nonlabor (38%): $2,295.69	If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,745.59 Nonlabor (38%): $2,295.69	If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,745.59 Nonlabor (38%): $2,295.69
FY 2020 Update Factor	1.026	1.0035	1.0185	0.996
FY 2020 MS-DRG Recalibration Budget Neutrality Factor	0.996859	0.996859	0.996859	0.996859
FY 2020 Wage Index Budget Neutrality Factor	1.001573	1.001573	1.001573	1.001573
FY 2020 Reclassification Budget Neutrality Factor	0.985447	0.985447	0.985447	0.985447
FY 2020 Lowest Quartile Budget Neutrality Factor	0.997984	0.997984	0.997984	0.997984
FY 2020 Transition Budget Neutrality Factor	0.998835	0.998835	0.998835	0.998835
FY 2020 Operating Outlier Factor	0.949	0.949	0.949	0.949
FY 2020 Rural Demonstration Budget Neutrality Factor	0.999771	0.999771	0.999771	0.999771

	Hospital Submitted Quality Data and is a Meaningful EHR User	**Hospital Submitted Quality Data and is NOT a Meaningful EHR User**	**Hospital Did NOT Submit Quality Data and is a Meaningful EHR User**	**Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User**
Adjustment for FY 2020 Required under Section 414 of Pub. L. 114-10 (MACRA)	1.005	1.005	1.005	1.005
National Standardized Amount for FY 2020 if Wage Index is Greater Than 1.0000; Labor/Non-Labor Share Percentage (68.3/31.7)	**Labor $3,959.10 Nonlabor: $1,837.53**	**Labor: $3,872.28 Nonlabor: $1,797.23**	**Labor: $3,930.16 Nonlabor: $1,824.10**	**Labor: $3,843.34 Nonlabor: $1,783.80**
National Standardized Amount for FY 2020 if Wage Index is Less Than or Equal to 1.0000; Labor/Non-Labor Share Percentage (62/38)	**Labor: $3,593.91 Nonlabor: $2,202.72**	**Labor: $3,515.10 Nonlabor: $2,154.41**	**Labor: $3,567.64 Nonlabor: $2,186.62**	**Labor: $3,488.83 Nonlabor: $2,138.31**

8. On page 42636, lower third of the page, first column, last paragraph, line 13, the figure ''0.997649'' is corrected to read ''0.996859''.

9. On page 42637, first column, second full paragraph, line 6, the figure ''0.70'' is corrected to read ''0.64''.

10. On page 42638, lower two-thirds of the page (after the table),

a. First column, second paragraph,

i. Line 10, the figure ''5.47 '' is corrected to read ''5.45''.

ii. Line 22, the figure ''5.39'' is corrected to read ''5.37''.

b. Second column,

i. First partial paragraph,

A. Line 1, the figure ''5.47'' is corrected to read ''5.45''.

B. Line 5, the figure ''0.9461'' is corrected to read ''0.9463''.

ii. First full paragraph,

A. Lines 5 and 6, the figurative phrase ''0.9461 is a −0.35 percent change'' is corrected to read ''0.9463 is −0.33 percent change''.

B. Lines 9 through 11, the figurative expression ''0.9965 (0.9461/0.9494; calculation performed on unrounded numbers)'' is corrected to read ''0.9967 (0.9463/0.9494; calculation performed on unrounded numbers)''.

C. Line 13, the figure ''−0.35'' is corrected to read ''−0.33''.

12. On page 42639,

a. First column, second partial paragraph, line 16, the figure ''1.0005'' is corrected to read ''1.0004''.

b. Second column,

i. First partial paragraph, line 8, the figure ''1.0005'' is corrected to read ''1.0004''.

ii. Second column, first full paragraph,

A. Line 13, the figure ''0.9987'' is corrected to read ''0.9979''.

B. Line 15, the figure ''0.9987'' is corrected to read ''0.9979''.

C. Line 17, the figurative expression ''0.9956 (0.9987 × 0.9968)'' is corrected to read ''0.9948 (0.9979 × 0.9968)''.

c. Third column,

i. First full paragraph,

A. Line 2, the figure ''0.9956'' is corrected to read ''0.9948''.

B. Line 6, the figure ''0.9987'' is corrected to read ''0.9979''.

ii. Second full paragraph,

A. Line 9, the figure ''$462.61'' is corrected to read ''$462.33''.

B. Line 10, the figure ''0.70 percent'' is corrected to read ''0.64 percent''.

iii. Second bulleted paragraph, line 5, the figure ''0.9956'' is corrected to read ''0.9948''.

iv. Third bulleted paragraph, line 2, the figure ''0.9461'' is corrected to read ''0.9463''.

v. Last paragraph,

A. Line 12, the figure ''0.44'' is corrected to read ''0.52''.

B. Line 14, the figure ''0.35'' is corrected to read ''0.33''.

C. Line 18, the figure ''0.70'' is corrected to read ''0.64''.

13. On page 42640, the chart titled ''COMPARISON of FACTORS AND ADJUSTMENTS: FY 2019 CAPITAL FEDERAL RATE AND THE FY 2020 CAPITAL FEDERAL RATE'' is corrected to read as follows:

	FY 2019	FY 2020	Change	Percent Change
Update Factor[1]	1.0140	1.0150	1.015	1.50
GAF/DRG Adjustment Factor[1]	0.9969	0.9948	0.9948	-0.52
Outlier Adjustment Factor[2]	0.9494	0.9463	0.9967	-0.33
Capital Federal Rate	$459.41	$462.33	1.0064	0.64[3]

[1] The update factor and the GAF/DRG budget neutrality adjustment factors are built permanently into the capital Federal rates. Thus, for example, the incremental change from FY 2019 to FY 2020 resulting from the application of the 0.9948 GAF/DRG budget neutrality adjustment factor for FY 2020 is a net change of 0.9948 (or -0.52 percent).

[2] The outlier reduction factor is not built permanently into the capital Federal rate; that is, the factor is not applied cumulatively in determining the capital Federal rate. Thus, for example, the net change resulting from the application of the FY 2020 outlier adjustment factor is 0.9463/0.9494 or 0.9967 (or -0.33 percent) (calculation performed on unrounded numbers).

[3] Percent change may not sum due to rounding.

14. On page 42641,

a. Second column, third paragraph, line 43, the figure ''$42,677.63'' is corrected to read ''$42,677.64.''

b. Third column, line 5, the figure ''$41,844.89'' is corrected to read ''$41,844.90''.

15. On page 42648, second column,

a. Third paragraph, line 8, the figure ''$26,473'' is corrected to read ''$26,552''.

b. Third paragraph, last line, the figure ''$26,473'' is corrected to read ''$26,552''.

c. Sixth paragraph, line 3, the figure ''$26,473'' is corrected to read ''$26,552''.

16. On page 42651, bottom of the page, the table titled ''TABLE 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (68.3 PERCENT LABOR SHARE/31.7 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1) —FY 2020'' is corrected to read as follows:

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (68.3 PERCENT LABOR SHARE/31.7 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1)--FY 2020

Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 2.6 Percent)		Hospital Submitted Quality Data and is NOT a Meaningful EHR User (Update = 0.35 Percent)		Hospital Did NOT Submit Quality Data and is a Meaningful EHR User (Update = 1.85 Percent)		Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User (Update = -0.4 Percent)	
Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor
$3,959.10	$1,837.53	$3,872.28	$1,797.23	$ 3,930.16	$1,824.10	$3,843.34	$1,783.80

17. On page 42652—

a. Top of page—

i. The table titled ''TABLE 1B—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX IS LESS THAN OR EQUAL TO 1)—FY 2020'' is corrected to read as follows:

TABLE 1B.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX IS LESS THAN OR EQUAL TO 1)—FY 2020

Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 2.6 Percent)		Hospital Submitted Quality Data and is NOT a Meaningful EHR User (Update = 0.35 Percent)		Hospital Did NOT Submit Quality Data and is a Meaningful EHR User (Update = 1.85 Percent)		Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User (Update =-0.4 Percent)	
Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor
$3,593.91	$2,202.72	$3,515.10	$2,154.41	$3,567.64	$2,186.62	$3,488.83	$2,138.31

ii. The table titled ''Table 1C—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR HOSPITALS IN PUERTO RICO, LABOR/NONLABOR (NATIONAL: 62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE BECAUSE WAGE INDEX IS LESS THAN OR EQUAL TO 1)—FY 2020'' is corrected to read as follows:

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR HOSPITALS IN PUERTO RICO, LABOR/NONLABOR (NATIONAL: 62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE BECAUSE WAGE INDEX IS LESS THAN OR EQUAL TO 1)--FY 2020

	Rates if Wage Index is Greater Than 1		Rates if Wage Index is Less Than or Equal to 1	
Standardized Amount	**Labor**	**Nonlabor**	**Labor**	**Nonlabor**
National[1]	Not Applicable	Not Applicable	$3,593.91	$2,202.72

[1] For FY 2020, there are no CBSAs in Puerto Rico with a national wage index greater than 1.

b. Middle of the page—

i. The table titled ''TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2020'' is corrected to read as follows:

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2020

	Rate
National	$462.33

c. Bottom of the page, the table ''Table 1E—LTCH PPS STANDARD FEDERAL PAYMENT RATE FY 2020'' is corrected to read as follows:

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TABLE 1E.—LTCH PPS STANDARD FEDERAL PAYMENT RATE--FY 2020

	Full Update (2.5 Percent)	Reduced Update* (0.5 Percent)
Standard Federal Rate	$42,677.64	$41,844.90

* For LTCHs that fail to submit quality reporting data for FY 2020 in accordance with the LTCH Quality Reporting Program (LTCH QRP), the annual update is reduced by 2.0 percentage points as required by section 1886(m)(5) of the Act.

C. Corrections of Errors in the Appendices

1. On page 42657 through 42660, the table and table notes for the table titled ''TABLE I—IMPACT ANALYSIS OF CHANGES TO THE IPPS FOR OPERATING COSTS FOR FY 2020'' are corrected to read as follows:

	Number of Hospitals[1]	Hospital Rate Update and Adjustment under MACRA (1)[2]	FY 2020 Weights and DRG Changes with Application of Recalibration Budget Neutrality (2)[3]	FY 2020 Wage Data with Application of Wage Budget Neutrality (3)[4]	FY 2020 MGCRB Reclassifications (4)[5]	Rural Floor with Application of National Rural Floor Budget Neutrality (5)[6]	Application of the Frontier State Wage Index and Outmigration Adjustment (6)[7]	Lowest Quartile Wage Index Adjustment and Transition with Application of Budget Neutrality (7)[8]	All FY 2020 Changes (8)[9]
All Hospitals	3,239	3	0	0	0	0	0.1	0	2.9
By Geographic Location:									
Urban hospitals	2,476	3.1	0	0	-0.1	0	0.1	0	2.9
Large urban areas	1,259	3.1	0.1	0	-0.7	-0.1	0.1	-0.1	2.8
Other urban areas	1,217	3	0	0	0.5	0.1	0.2	0.1	3
Rural hospitals	763	2.7	-0.3	0	1.1	-0.1	0.1	0.3	2.8
Bed Size (Urban):									
0-99 beds	635	3	-0.3	0	-0.8	0	0.3	0	2.6
100-199 beds	766	3.1	-0.1	-0.1	-0.2	0.1	0.2	0.1	2.8
200-299 beds	438	3.1	-0.1	0	0.1	0.1	0.1	0	2.8
300-499 beds	416	3.1	0	0.1	-0.1	0	0.1	0	3.1
500 or more beds	221	3	0.2	0	-0.1	-0.1	0	-0.1	3
Bed Size (Rural):									
0-49 beds	317	2.7	-0.2	-0.1	0.4	-0.1	0.2	0.7	3.3
50-99 beds	262	2.6	-0.4	0	0.7	0	0.2	0.4	2.7
100-149 beds	101	2.8	-0.3	0	1	-0.1	-0.1	0.2	3
150-199 beds	45	2.8	-0.3	0	1.6	-0.1	0.2	0.3	2.7
200 or more beds	38	2.8	-0.1	0.1	1.9	-0.1	0	0.2	2.4
Urban by Region:									
New England	112	3.1	0.1	-0.4	1.8	0.4	0.1	0.9	0.7
Middle Atlantic	307	3.1	0.1	-0.1	0.6	-0.2	0.1	-0.2	3.3
South Atlantic	399	3	0	-0.1	-0.7	-0.1	0	-0.2	2.6
East North Central	386	3.1	0	-0.2	-0.3	-0.2	0.1	-0.3	2.8
East South Central	147	3.1	0	-0.2	-0.3	-0.1	0	0.8	3.8
West North Central	157	3	0	0.3	-0.9	-0.1	0.6	-0.2	3.2
West South Central	375	3.1	0	0	-0.8	-0.1	0	0	2.9
Mountain	169	3	-0.1	0.2	0	0.1	0.3	0.1	2.1
Pacific	374	3	0	0.5	0.2	0.5	0.1	-0.2	3.6
Puerto Rico	50	3.1	-0.1	-0.2	-1.1	0.3	0.1	12.5	14.8
Rural by Region:									
New England	20	2.9	-0.1	-0.8	0.6	-0.1	0	-0.1	1.2
Middle Atlantic	53	2.6	-0.2	-0.1	0.9	-0.1	0	-0.1	2.5

	Number of Hospitals[1]	Hospital Rate Update and Adjustment under MACRA (1)[2]	FY 2020 Weights and DRG Changes with Application of Recalibration Budget Neutrality (2)[3]	FY 2020 Wage Data with Application of Wage Budget Neutrality (3)[4]	FY 2020 MGCRB Reclassifications (4)[5]	Rural Floor with Application of National Rural Floor Budget Neutrality (5)[6]	Application of the Frontier State Wage Index and Outmigration Adjustment (6)[7]	Lowest Quartile Wage Index Adjustment and Transition with Application of Budget Neutrality (7)[8]	All FY 2020 Changes (8)[9]
South Atlantic	120	2.7	-0.2	-0.2	1.7	0	0	0.5	3.1
East North Central	114	2.7	-0.3	0	0.9	-0.1	0	0	2.5
East South Central	149	2.9	-0.2	0.5	1.7	-0.1	0.1	0.9	3.6
West North Central	93	2.5	-0.4	0.1	0.3	0	0.3	0.1	2.4
West South Central	140	2.9	-0.3	-0.1	1.5	-0.1	0.1	0.7	3.4
Mountain	50	2.5	-0.4	0.2	0.2	0	0.6	-0.1	2.1
Pacific	24	2.7	-0.3	0.1	1	0	0	0	2.4
By Payment Classification:									
Urban hospitals	2,183	3.1	0	0	-0.6	0	0.1	0	2.9
Large urban areas	1,281	3.1	0.1	0	-0.7	-0.1	0.1	-0.1	2.8
Other urban areas	902	3.1	-0.1	0	-0.4	0.3	0.2	0.1	3
Rural areas	1,056	2.9	-0.1	0.1	1.6	-0.1	0.1	0.1	2.9
Teaching Status:									
Nonteaching	2,116	3	-0.1	0.1	0.1	0.1	0.1	0.1	2.9
Fewer than 100 residents	873	3.1	-0.1	-0.1	-0.1	0	0.2	0	2.9
100 or more residents	250	3	0.2	0	0.1	-0.1	0	-0.1	3
Urban DSH:									
Non-DSH	522	3.1	-0.1	-0.1	-0.2	-0.1	0.2	-0.1	2.7
100 or more beds	1,400	3.1	0	0	-0.6	0.1	0.1	0	2.9
Less than 100 beds	358	3.1	-0.2	0	-0.7	0.1	0.2	0	2.6
Rural DSH:									
SCH	258	2.5	-0.4	0	0	0	0	0.1	2.4
RRC	446	3	0	0.2	1.9	-0.1	0.1	0.1	3
100 or more beds	28	3.1	0	-1	0.3	-0.2	0	0.2	2.1
Less than 100 beds	227	2.8	-0.1	-0.2	0.3	-0.1	0.2	1.3	3.9
Urban teaching and DSH:									
Both teaching and DSH	781	3.1	0.1	-0.1	-0.7	0	0.1	-0.1	2.9
Teaching and no DSH	76	3.1	0	-0.1	-0.2	-0.2	0	-0.2	2.8
No teaching and DSH	977	3.1	-0.1	0	-0.4	0.2	0.1	0.1	2.8
No teaching and no DSH	349	3.1	-0.2	0	-0.8	-0.1	0.3	-0.1	2.8
Special Hospital Types:									
RRC	383	3.1	0	0.1	2.2	-0.1	0.2	0.1	3.1
SCH	306	2.5	-0.3	0	0	0	0	0.1	2.4
MDH	150	2.7	-0.4	-0.1	0.5	-0.1	0.3	0.6	3.1
SCH and RRC	144	2.6	-0.3	0	0.3	0	0	0.1	2.5
MDH and RRC	19	2.8	-0.5	-0.1	0.5	0.2	0	0.1	2.1
Type of Ownership:									
Voluntary	1,892	3	0	0	0.1	0	0.1	0	2.9
Proprietary	853	3.1	0	0	-0.2	0	0.1	0.1	2.8
Government	494	3	0.1	-0.1	-0.1	0.1	0	0	3

	Number of Hospitals[1]	Hospital Rate Update and Adjustment under MACRA (1)[2]	FY 2020 Weights and DRG Changes with Application of Recalibration Budget Neutrality (2)[3]	FY 2020 Wage Data with Application of Wage Budget Neutrality (3)[4]	FY 2020 MGCRB Reclassifications (4)[5]	Rural Floor with Application of National Rural Floor Budget Neutrality (5)[6]	Application of the Frontier State Wage Index and Outmigration Adjustment (6)[7]	Lowest Quartile Wage Index Adjustment and Transition with Application of Budget Neutrality (7)[8]	All FY 2020 Changes (8)[9]
Medicare Utilization as a Percent of Inpatient Days:									
0-25	613	3	0.1	0.2	-0.4	0	0	0	3
25-50	2,140	3	0	0	0	0	0.1	0	2.9
50-65	396	3	-0.2	-0.2	0.5	0.1	0.2	0.1	2.6
Over 65	68	2.6	1.2	0.3	-0.9	0.2	0.6	0.9	6
FY 2020 Reclassifications by the Medicare Geographic Classification Review Board:									
All Reclassified Hospitals	820	3	0	0.1	2.2	-0.1	0.1	0	3.1
Non-Reclassified Hospitals	2,419	3	0	0	-0.9	0	0.1	0	2.8
Urban Hospitals Reclassified	547	3	0	0.1	2.3	-0.1	0.1	0	3.2
Urban Non-Reclassified Hospitals	1,836	3.1	0	0	-1.1	0.1	0.1	-0.1	2.9
Rural Hospitals Reclassified Full Year	273	2.8	-0.3	0.1	1.8	0	0	0.2	2.7
Rural Non-Reclassified Hospitals Full Year	436	2.6	-0.2	-0.2	-0.3	-0.1	0.2	0.6	2.9
All Section 401 Reclassified Hospitals	347	3	0	0.1	1.9	-0.1	0.1	0	3
Other Reclassified Hospitals (Section 1886(d)(8)(B))	54	2.9	-0.2	-0.2	2.1	-0.1	0	0.2	2.7

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2018, and hospital cost report data are from reporting periods beginning in FY 2017 and FY 2016.

[2] This column displays the payment impact of the hospital rate update and other adjustments, including the 2.6 percent adjustment to the national standardized amount and the hospital-specific rate (the estimated 3.0 percent market basket update reduced by 0.4 percentage point for the multifactor productivity adjustment), and the 0.5 percentage point adjustment to the national standardized amount required under section 414 of the MACRA.

[3] This column displays the payment impact of the changes to the Version 37 GROUPER, the changes to the relative weights and the recalibration of the MS-DRG weights based on FY 2018 MedPAR data in accordance with section 1886(d)(4)(C)(iii) of the Act. This column displays the application of the recalibration budget neutrality factor of 0.996859 in accordance with section 1886(d)(4)(C)(iii) of the Act.

[4] This column displays the payment impact of the update to wage index data using FY 2016 cost report data and the OMB labor market area delineations based on 2010 Decennial Census data. This column displays the payment impact of the application of the wage budget neutrality factor, which is calculated separately from the recalibration budget neutrality factor, and is calculated in accordance with section 1886(d)(3)(E)(i) of the Act. The wage budget neutrality factor is 1.001573.

[5] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2020 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2020. Reclassification for prior years has no bearing on the payment impacts shown here. This column reflects the geographic budget neutrality factor of 0.985447.

[6] This column displays the effects of the rural floor. For FY 2020 and subsequent years, we are calculating the rural floor without including the wage data of hospitals that have reclassified as rural under § 412.103. The statute requires the rural floor budget neutrality adjustment to be 100 percent national level adjustment. The rural floor budget neutrality factor applied to the wage index is 0.997073.

[7] This column shows the combined impact of the policy required under section 10324 of the Affordable Care Act that hospitals located in frontier States have a wage index no less than 1.0 and of section 1886(d)(13) of the Act, as added by section 505 of Pub. L. 108-173, which provides for an increase in a hospital's wage index if a threshold percentage of residents of the county where the hospital is located commute to work at hospitals in counties with higher wage indexes. These are not budget neutral policies.

[8] This column displays the effects of increasing the wage index for hospitals with a wage index value below the 25th percentile wage index (that is, the lowest quartile wage index adjustment), the transition policy to place a 5-percent cap on any decrease in a hospital's wage index from its final wage index in FY 2019 (that is, the 5-percent cap), and the associated budget neutrality factors,. This column reflects the budget neutrality factor of 0.997984 for the lowest quartile wage index adjustment and the budget neutrality factor of 0.998835 for the 5-percent cap.

[9] This column shows the estimated change in payments from FY 2019 to FY 2020.

2. On page 42661, first column, fourth full paragraph, line 6, the figure ''0.997649'' is corrected to read ''0.996859''.

3. On page 42662,

a. lower half of the page, first column, third paragraph, line 6, the figure ''0.985425'' is corrected to read ''0.985447''.

b. lower half of the page, second column, third full paragraph, line 6, the figure ''0.997081'' is corrected to read ''0.997073''.

c. lower half of the page, third column, first full paragraph, line 16, the figure ''0.997081'' is corrected to read ''0.997073''.

4. On page 42664 through 42666, in the table titled ''Comparison of FY 2019 and FY 2020 IPPS Estimated Payments Due to Rural Floor with National Budget Neutrality'' the table is corrected to read as follows:

Comparison of FY 2019 and FY 2020 IPPS Estimated Payments Due to Rural Floor with National Budget Neutrality								
	FY 2019 Final Rule Correction Notice				FY 2020 Final Rule Correction Notice			
State	Number of Hospitals (1a)	Number of Hospitals That Received the Rural Floor (2a)	Percent Change in Payments due to Application of Rural Floor with Budget Neutrality (3a)	Difference (in millions) (4a)	Number of Hospitals (1b)	Number of Hospitals That Will Receive the Rural Floor (2b)	Percent Change in Payments due to Application of Rural Floor with Budget Neutrality (3b)	Difference (in $ millions) (4b)
Alabama	84	2	-0.3	$ -5	83	1	-0.1	$-2
Alaska	6	3	0.1	0	6	3	1.1	$2
Arizona	56	33	1.3	26	54	2	-0.1	$-2
Arkansas	45	0	-0.3	-3	46	0	-0.1	$-2
California	297	59	0.4	42	297	52	0.6	$78
Colorado	45	9	0.7	9	49	9	0.5	$7
Connecticut	30	8	1.3	21	30	0	-0.2	$-3
Delaware	6	0	-0.3	-2	6	0	-0.1	$-1
Washington, D.C.	7	0	-0.3	-2	7	0	-0.2	$-1
Florida	168	7	-0.3	-20	168	7	-0.1	$-10
Georgia	101	0	-0.3	-8	100	1	-0.1	$-4
Hawaii	12	6	-0.1	0	12	0	-0.1	$0
Idaho	14	0	-0.3	-1	16	0	-0.1	$-1
Illinois	125	2	-0.3	-14	126	2	-0.2	$-8
Indiana	85	0	-0.3	-7	85	0	-0.2	$-4
Iowa	34	0	-0.3	-3	34	3	-0.1	$-1
Kansas	51	0	-0.2	-2	51	0	-0.1	$-1
Kentucky	64	0	-0.3	-5	64	0	-0.1	$-2
Louisiana	90	0	-0.3	-5	89	0	-0.1	$-2
Maine	17	0	-0.3	-2	17	0	-0.2	$-1
Massachusetts	56	29	3.3	123	55	11	0.6	$25
Michigan	94	0	-0.3	-14	94	0	-0.2	$-6
Minnesota	49	0	-0.2	-6	48	0	-0.1	$-3

Comparison of FY 2019 and FY 2020 IPPS Estimated Payments Due to Rural Floor with National Budget Neutrality								
	FY 2019 Final Rule Correction Notice				FY 2020 Final Rule Correction Notice			
State	Number of Hospitals (1a)	Number of Hospitals That Received the Rural Floor (2a)	Percent Change in Payments due to Application of Rural Floor with Budget Neutrality (3a)	Difference (in millions) (4a)	Number of Hospitals (1b)	Number of Hospitals That Will Receive the Rural Floor (2b)	Percent Change in Payments due to Application of Rural Floor with Budget Neutrality (3b)	Difference (in $ millions) (4b)
Mississippi	59	0	-0.3	-3	59	0	-0.1	$-2
Missouri	72	0	-0.2	-6	72	0	-0.1	$-3
Montana	13	1	-0.2	-1	13	1	-0.1	$0
Nebraska	23	0	-0.3	-2	23	0	-0.1	$-1
Nevada	22	3	0.4	3	22	3	0.6	$6
New Hampshire	13	8	2.4	14	13	8	1	$6
New Jersey	64	0	-0.4	-16	64	0	-0.2	$-7
New Mexico	24	2	-0.2	-1	24	0	-0.1	$-1
New York	149	16	-0.3	-21	146	12	-0.1	$-12
North Carolina	84	0	-0.3	-9	83	0	-0.1	$-5
North Dakota	6	3	0.4	1	6	3	0.3	$1
Ohio	130	7	-0.3	-11	129	7	-0.1	$-5
Oklahoma	79	2	-0.3	-4	78	1	-0.1	$-2
Oregon	34	1	-0.2	-2	34	1	-0.1	$-1
Pennsylvania	150	3	-0.3	-17	150	1	-0.2	$-8
Puerto Rico	51	11	0.1	0	50	8	0.3	$0
Rhode Island	11	0	-0.4	-1	11	0	-0.2	$-1
South Carolina	54	6	-0.1	-1	54	5	-0.1	$-2
South Dakota	17	0	-0.2	-1	16	0	-0.1	$0
Tennessee	90	6	-0.3	-7	90	7	-0.1	$-2
Texas	310	13	-0.3	-18	302	10	-0.1	$-9
Utah	31	0	-0.3	-2	31	0	-0.1	$-1
Vermont	6	0	-0.2	0	6	0	-0.1	$0

Comparison of FY 2019 and FY 2020 IPPS Estimated Payments Due to Rural Floor with National Budget Neutrality								
	FY 2019 Final Rule Correction Notice				FY 2020 Final Rule Correction Notice			
State	Number of Hospitals (1a)	Number of Hospitals That Received the Rural Floor (2a)	Percent Change in Payments due to Application of Rural Floor with Budget Neutrality (3a)	Difference (in millions) (4a)	Number of Hospitals (1b)	Number of Hospitals That Will Receive the Rural Floor (2b)	Percent Change in Payments due to Application of Rural Floor with Budget Neutrality (3b)	Difference (in $ millions) (4b)
Virginia	74	1	-0.2	-6	72	1	0	$-1
Washington	48	3	-0.3	-7	49	3	-0.1	$-3
West Virginia	29	2	-0.2	-1	29	2	-0.1	$0
Wisconsin	66	5	-0.3	-5	66	0	-0.2	$-3
Wyoming	10	2	0	0	10	0	0	$0

5. On page 42667—

a. Second column, first full paragraph—

i. Line 9, the figure ''0.997987'' is corrected to read ''0.997984''.

ii. Line 18, the figure ''0.998838'' is corrected to read ''0.998835''.

6. On page 42668 through 42669, the table titled ''TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2020 ACUTE CARE HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER DISCHARGE)'' is corrected to read as follows:

TABLE II.--IMPACT ANALYSIS OF CHANGES FOR FY 2020 ACUTE CARE HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER DISCHARGE)				
	Number of Hospitals (1)	Estimated Average FY 2019 Payment Per Discharge (2)	Estimated Average FY 2020 Payment Per Discharge (3)	FY 2020 Changes (4)
All Hospitals	3,239	12,808	13,181	2.9
By Geographic Location:				
Urban hospitals	2,476	13,175	13,559	2.9
Large urban areas	1,259	13,603	13,989	2.8
Other urban areas	1,217	12,790	13,174	3
Rural hospitals	763	9,542	9,807	2.8
Bed Size (Urban):				
0-99 beds	635	10,491	10,760	2.6
100-199 beds	766	10,867	11,171	2.8
200-299 beds	438	11,993	12,329	2.8
300-499 beds	416	13,227	13,631	3.1
500 or more beds	221	16,281	16,766	3
Bed Size (Rural):				
0-49 beds	317	8,181	8,451	3.3
50-99 beds	262	9,127	9,374	2.7
100-149 beds	101	9,472	9,753	3
150-199 beds	45	9,991	10,264	2.7
200 or more beds	38	11,108	11,374	2.4
Urban by Region:				
New England	112	14,519	14,626	0.7
Middle Atlantic	307	14,745	15,229	3.3
South Atlantic	399	11,748	12,057	2.6
East North Central	386	12,398	12,750	2.8
East South Central	147	11,024	11,447	3.8
West North Central	157	12,700	13,107	3.2
West South Central	375	12,145	12,503	2.9
Mountain	169	13,561	13,839	2.1
Pacific	374	16,527	17,119	3.6
Puerto Rico	50	10,051	11,536	14.8
Rural by Region:				
New England	20	13,110	13,263	1.2
Middle Atlantic	53	9,440	9,678	2.5
South Atlantic	120	8,892	9,172	3.1
East North Central	114	9,815	10,056	2.5
East South Central	149	8,391	8,693	3.6
West North Central	93	10,143	10,391	2.4
West South Central	140	8,336	8,619	3.4
Mountain	50	11,634	11,877	2.1
Pacific	24	13,104	13,417	2.4
By Payment Classification:				
Urban hospitals	2,183	12,889	13,263	2.9
Large urban areas	1,281	13,583	13,968	2.8
Other urban areas	902	11,892	12,249	3
Rural areas	1,056	12,595	12,964	2.9
Teaching Status:				
Nonteaching	2,116	10,511	10,812	2.9
Fewer than 100 residents	873	12,156	12,508	2.9
100 or more residents	250	18,726	19,283	3
Urban DSH:				
Non-DSH	522	11,096	11,398	2.7
100 or more beds	1,400	13,290	13,678	2.9
Less than 100 beds	358	9,814	10,071	2.6

TABLE II.--IMPACT ANALYSIS OF CHANGES FOR FY 2020 ACUTE CARE HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER DISCHARGE)				
	Number of Hospitals (1)	Estimated Average FY 2019 Payment Per Discharge (2)	Estimated Average FY 2020 Payment Per Discharge (3)	FY 2020 Changes (4)
Rural DSH:				
SCH	258	10,705	10,959	2.4
RRC	446	13,341	13,745	3
100 or more beds	28	11,648	11,897	2.1
Less than 100 beds	227	7,735	8,034	3.9
Urban teaching and DSH:				
Both teaching and DSH	781	14,480	14,906	2.9
Teaching and no DSH	76	12,305	12,653	2.8
No teaching and DSH	977	10,865	11,172	2.8
No teaching and no DSH	349	10,254	10,540	2.8
Special Hospital Types:				
RRC	383	13,454	13,869	3.1
SCH	306	11,531	11,804	2.4
MDH	150	8,366	8,628	3.1
SCH and RRC	144	11,751	12,040	2.5
MDH and RRC	19	10,311	10,526	2.1
Type of Ownership:				
Voluntary	1,892	12,905	13,281	2.9
Proprietary	853	11,278	11,598	2.8
Government	494	14,324	14,749	3
Medicare Utilization as a Percent of Inpatient Days:				
0-25	613	15,792	16,272	3
25-50	2,140	12,555	12,919	2.9
50-65	396	10,140	10,405	2.6
Over 65	68	7,669	8,129	6
FY 2020 Reclassifications by the Medicare Geographic Classification Review Board:				
All Reclassified Hospitals	820	12,749	13,143	3.1
Non-Reclassified Hospitals	2,419	12,834	13,197	2.8
Urban Hospitals Reclassified	547	13,415	13,838	3.2
Urban Non-reclassified Hospitals	1,836	12,930	13,305	2.9
Rural Hospitals Reclassified Full Year	273	9,835	10,103	2.7
Rural Non-reclassified Hospitals Full Year	436	9,159	9,424	2.9
All Section 401 Reclassified Hospitals:	347	14,169	14,592	3
Other Reclassified Hospitals (Section 1886(d)(8)(B) of the Act)	54	9,197	9,442	2.7

7. On page 42672 through 42674 the table titled ''Modeled Uncompensated Care Payments for Estimated FY 2020 DSHs by Hospital Type: Model Uncompensated Care Payments ($ in Millions)—from FY 2019 to FY 2020'' is corrected to read as follows:

Modeled Uncompensated Care Payments for Estimated FY 2020 DSHs by Hospital Type: Model Uncompensated Care Payments ($ in Millions)* - from FY 2019 to FY 2020					
	Number of Estimated DSHs (1)	FY 2019 Final Rule Estimated Uncompen-sated Care Payments ($ in millions) (2)	FY 2020 Final Rule Estimated Uncompensated Care Payments ($ in millions) (3)	Dollar Difference: FY 2019 - FY 2020 ($ in millions) (4)	Percent Change** (5)
Total	2,420	$8,273	$8,351	$78	0.94%
By Geographic Location					
Urban Hospitals	1,921	$7,806	$7,811	$6	0.07%
Large Urban Areas	971	$4,326	$4,541	$215	4.98%
Other Urban Areas	950	$3,480	$3,270	-$210	-6.03%
Rural Hospitals	499	$467	$539	$72	15.44%
Bed Size (Urban)					
0 to 99 Beds	330	$254	$290	$36	14.20%
100 to 249 Beds	825	$1,847	$1,887	$40	2.16%
250+ Beds	766	$5,704	$5,634	-$70	-1.23%
Bed Size (Rural)					
0 to 99 Beds	374	$234	$287	$54	22.92%
100 to 249 Beds	111	$190	$204	$14	7.23%
250+ Beds	14	$43	$48	$5	11.05%
Urban by Region					
New England	91	$279	$250	-$29	-10.44%
Middle Atlantic	242	$1,058	$1,055	-$3	-0.30%
South Atlantic	310	$1,769	$1,968	$199	11.26%
East North Central	316	$1,010	$825	-$185	-18.36%
East South Central	130	$477	$498	$20	4.27%
West North Central	104	$386	$381	-$5	-1.29%
West South Central	242	$1,423	$1,690	$266	18.72%
Mountain	125	$401	$373	-$28	-7.07%
Pacific	319	$899	$663	-$236	-26.25%
Puerto Rico	42	$102	$109	$7	6.57%
Rural by Region					
New England	9	$17	$17	$0	2.24%
Middle Atlantic	24	$22	$20	-$1	-6.21%
South Atlantic	92	$116	$145	$29	25.13%
East North Central	72	$56	$60	$4	7.51%
East South Central	128	$106	$107	$1	0.84%
West North Central	34	$22	$32	$10	45.69%
West South Central	109	$102	$128	$26	25.45%
Mountain	25	$22	$23	$1	5.80%
Pacific	6	$5	$6	$2	32.21%
By Payment Classification					
Urban Hospitals	1,681	$6,514	$6,663	$149	2.29%
Large Urban Areas	987	$4,342	$4,557	$215	4.95%
Other Urban Areas	694	$2,171	$2,106	-$66	-3.02%
Rural Hospitals	739	$1,759	$1,688	-$72	-4.07%
Teaching Status					
Nonteaching	1,447	$2,479	$2,576	$97	3.89%

Modeled Uncompensated Care Payments for Estimated FY 2020 DSHs by Hospital Type: Model Uncompensated Care Payments ($ in Millions)* - from FY 2019 to FY 2020					
	Number of Estimated DSHs (1)	FY 2019 Final Rule Estimated Uncompen-sated Care Payments ($ in millions) (2)	FY 2020 Final Rule Estimated Uncompensated Care Payments ($ in millions) (3)	Dollar Difference: FY 2019 - FY 2020 ($ in millions) (4)	Percent Change** (5)
Fewer than 100 residents	727	$2,847	$2,798	-$48	-1.70%
100 or more residents	246	$2,947	$2,976	$29	1.00%
Type of Ownership					
Voluntary	1,447	$4,898	$4,557	-$341	-6.97%
Proprietary	594	$1,270	$1,247	-$23	-1.80%
Government	379	$2,104	$2,546	$442	20.99%
Medicare Utilization Percent* **					
0 to 25	525	$3,097	$3,234	$138	4.44%
25 to 50	1,651	$4,979	$4,894	-$85	-1.70%
50 to 65	209	$190	$210	$20	10.62%
Greater than 65	33	$7	$12	$5	66.92%

Source: Dobson | DaVanzo analysis of 2013-2015 Hospital Cost reports

*Dollar uncompensated care payments calculated by [0.75 * estimated section 1886(d)(5)(F) payments * Factor 2 * Factor 3]. When summed across all hospitals projected to receive DSH payments, uncompensated care payments are estimated to be $8,273 million in FY 2019 and $8,351 million in FY 2020.

** Percentage change is determined as the difference between Medicare uncompensated care payments modeled for this FY 2020 IPPS/LTCH PPS final rule correction notice (column 3) and Medicare uncompensated care payments modeled for the FY 2019 IPPS/LTCH PPS final rule correction notice (column 2) divided by Medicare uncompensated care payments modeled for the FY 2019 IPPS/LTCH PPS final rule correction notice (column 2) times 100 percent.

***Hospitals with missing or unknown Medicare utilization are not shown in table

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8. On page 42674,

a. Second column, second full paragraph,

i. Line 5, the figure ''23.00'' is corrected to read ''22.92''.

ii. Line 8, the figure ''7.15'' is corrected to read ''7.23''.

iii. Line 10, the figure ''10.96'' is corrected to read ''11.05''.

b. Third column, first partial paragraph,

i. Line 6, the figure ''14.42'' is corrected to read ''14.20''.

ii. Line 8, the figure ''2.14'' is corrected to read ''2.16''.

iii. Line 11, the figure ''1.24'' is corrected to read ''1.23''.

c. Third column, first full paragraph,

i. Line 10, the phrase ''New England, East North Central'' is corrected to read: ''New England, Middle Atlantic, East North Central''.

ii. Line 13 to 16, the phrase ''A smaller than average increase in uncompensated care payments is projected in the Middle Atlantic Region, while urban hospitals'' is corrected to read ''Urban hospitals''.

c. Third column, second full paragraph,

i. Line 3, the figure ''2.32'' is corrected to read ''2.29''.

9. On page 42675,

a. First column, first partial paragraph,

i. Line 3, the figure ''4.99'' is corrected to read ''4.95''.

ii. Line 6, the figure ''3.01'' is corrected to read ''3.02''.

iii. Line 8, the figure ''4.17'' is corrected to read ''4.07''.

b. First column, first full paragraph,

i. Line 3, the figure ''3.82'' is corrected to read ''3.89''.

ii. Line 5, the figure ''1.92'' is corrected to read ''1.70''.

iii. Line 8, the figure ''1.27'' is corrected read ''1.00''.

iv. Line 11, the figure ''21.32'' is corrected to read ''20.99''.

v. Line 13, the figure ''1.97'' is corrected to read ''1.80''.

vi. Line 13, the figure ''7.06'' is corrected to read ''6.97''.

10. On page 42684,

a. First column, first partial paragraph,

i. Line 1, the figure ''0.9956'' is corrected to read ''0.9948''.

ii. Line 2, the figure ''0.9461'' is corrected to read ''0.9463''.

b. Second column, third paragraph, line 5, the figure ''2.5 percent'' is corrected to read ''2.6 percent''.

c. Third column, last paragraph, line 14, the figure ''1.2 percent'' is corrected to read ''1.3 percent''.

11. On pages 42685 and 42686, the table titled ''TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE [FY 2019 PAYMENTS COMPARED TO FY 2020 PAYMENTS] is corrected to read as:

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE
[FY 2019 PAYMENTS COMPARED TO FY 2020 PAYMENTS]

	Number of Hospitals	Average FY 2019 Payments/ Case	Average FY 2020 Payments/ Case	Percent Change
All hospitals	3,239	$973	$987	1.4
By Geographic Location:				
Urban hospitals	2,476	$1,007	$1,021	1.3
Large urban areas (populations over 1 million)	1,259	$1,048	$1,063	1.4
Other urban areas (populations of 1 million of fewer)	1,217	$971	$983	1.2
Rural hospitals	763	$667	$680	2.0
By Bed Size (Urban):				
0-99 beds	635	$820	$829	1.2
100-199 beds	766	$863	$874	1.3
200-299 beds	438	$935	$946	1.2
300-499 beds	416	$1,010	$1,024	1.4
500 or more beds	221	$1,205	$1,222	1.4
By Bed Size (Rural):				
0-49 beds	317	$562	$579	2.9
50-99 beds	262	$625	$639	2.2
100-149 beds	101	$665	$680	2.2
150-199 beds	45	$710	$724	1.8
200 or more beds	38	$791	$799	1.1
By Region: Urban by Region				
New England	112	$1,125	$1,109	-1.3
Middle Atlantic	307	$1,101	$1,120	1.7
South Atlantic	399	$894	$904	1.1
East North Central	386	$963	$972	1.0
East South Central	147	$845	$867	2.6
West North Central	157	$987	$1,004	1.7
West South Central	375	$919	$934	1.6
Mountain	169	$1,041	$1,044	0.3
Pacific	374	$1,282	$1,307	2.0

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE
[FY 2019 PAYMENTS COMPARED TO FY 2020 PAYMENTS]

	Number of Hospitals	Average FY 2019 Payments/ Case	Average FY 2020 Payments/ Case	Percent Change
Rural by Region				
New England	20	$931	$925	-0.6
Middle Atlantic	53	$652	$662	1.4
South Atlantic	120	$616	$633	2.8
East North Central	114	$678	$685	1.0
East South Central	149	$610	$629	3.1
West North Central	93	$700	$714	1.9
West South Central	140	$601	$617	2.6
Mountain	50	$766	$774	1.0
Pacific	24	$863	$889	3.0
By Payment Classification:				
All hospitals				
Large urban hospitals	1,281	$1,046	$1,061	1.5
Other urban hospitals	902	$932	$948	1.7
Rural hospitals	1,056	$905	$913	0.9
Teaching Status:				
Non-teaching	2,116	$824	$837	1.6
Fewer than 100 Residents	873	$934	$945	1.2
100 or more Residents	250	$1,351	$1,369	1.4
Urban DSH:				
Non-DSH	522	$913	$923	1.1
100 or more beds	1,400	$1,022	$1,038	1.6
Less than 100 beds	358	$750	$760	1.3
Rural DSH:				
Sole Community	258	$695	$710	2.2
Rural Referral Center	446	$965	$972	0.7
Other Rural:				
100 or more beds	28	$875	$864	-1.3
Less than 100 beds	227	$547	$566	3.5
Urban teaching and DSH:				
Both teaching and DSH	781	$1,093	$1,111	1.6
Teaching and no DSH	76	$991	$1,003	1.1
No teaching and DSH	977	$870	$883	1.5
No teaching and no DSH	349	$874	$884	1.1
Rural Hospital Types:				
Non special status hospitals	170	$737	$743	0.8
RRH/EACH	383	$999	$1,007	0.8
SCH/EACH	306	$766	$780	1.9
SCH, RRC and EACH	144	$801	$808	0.9
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY 2020 Reclassifications:				
All Urban Reclassified	547	$1,009	$1,022	1.3
All Urban Non-Reclassified	1,836	$1,001	$1,016	1.5
All Rural Reclassified	273	$694	$705	1.7
All Rural Non-Reclassified	436	$625	$642	2.7
Other Reclassified Hospitals (Section 1886(d)(8)(B))	54	$671	$683	1.8

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE
[FY 2019 PAYMENTS COMPARED TO FY 2020 PAYMENTS]

	Number of Hospitals	Average FY 2019 Payments/ Case	Average FY 2020 Payments/ Case	Percent Change
Type of Ownership:				
Voluntary	1,892	$987	$1,000	1.3
Proprietary	853	$884	$897	1.5
Government	494	$1,017	$1,033	1.6
Medicare Utilization as a Percent of Inpatient Days:				
0-25	613	$1,112	$1,131	1.7
25-50	2,140	$968	$981	1.3
50-65	396	$789	$799	1.2
Over 65	68	$607	$638	5.2

Dated: October 1, 2019.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2019–21865 Filed 10–7–19; 8:45 am]

BILLING CODE 4120–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 17–95; FCC 18–138]

Earth Stations in Motion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules to facilitate the deployment of earth stations in motion (ESIMs) communicating with geostationary (GSO) fixed-satellite service (FSS) satellite systems.

DATES: This rule is effective: October 8, 2019.

ADDRESSES: You may submit comments, identified by IB Docket No. 17–95, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Cindy Spiers, 202–418–1593.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), IB Docket No. 17–95, FCC 18–138, adopted on September 26, 2018, and released on September 27, 2018. The full text of this document is available at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-138A1.pdf.* The full text of this document is also available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act

This document contains new and modified information collection requirements. The Commission has received approval from the Office of Management and Budget (OMB) for the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB approval was received on July 17, 2019 for OMB control number 3060–0678. In addition, we previously sought comments from the public on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

In this Report and Order (R&O), the Commission simplifies its rules to facilitate the continued deployment of Earth Stations in Motion (ESIMs) and reduce the regulatory burdens on ESIMs. First, we reorganize and consolidate the sections in part 25 of the Commission's rules, including technical and operational as well as application rules, for the three types of Fixed-Satellite Service (FSS) earth stations that the Commission authorizes to transmit while in motion: Earth Stations on Vessels (ESVs), Vehicle-Mounted Earth Stations (VMESs), and Earth Stations Aboard Aircraft (ESAAs), collectively known as ESIMs. Second, we amend our rules to allow the operation of ESIMs in the conventional Ka-band. Specifically, our rules apply to ESIMs communicating with geostationary-orbit (GSO) FSS space stations operating in 18.3–18.8 GHz and 19.7–20.2 GHz (space-to-Earth), and 28.35–28.6 GHz and 29.25–30.0 GHz (Earth-to-space) frequency bands. The new rules create regulatory equity by adopting a regulatory regime for ESIM operations in the conventional Ka-band similar to that which currently exists in the conventional C-band, the conventional Ku-band, and in portions of the extended Ku-band.[1]

Report and Order

Commenters generally applaud the Commission for its decision to consolidate ESIMs regulations into a single rule section.[2] AC BidCo urges the Commission to implement these revisions to eliminate redundancy in its rules and provide a unified framework

[1] The ''conventional C-band'' refers to the 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space) FSS frequency bands. *See* 47 CFR 25.103. The ''conventional Ku-band'' refers to the 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space) FSS frequency bands, and the ''extended Ku-band'' refers to the 10.95–11.2 GHz, 11.45–11.7 GHz, and 13.75–14.0 GHz bands.

[2] *See, e.g.,* Boeing Comments at 1; Inmarsat Comments at 8; Joint Commenters of Kymeta Corporation and Intelsat License LLC (Joint Comments) at 1; and ViaSat Comments at 1.

for all ESIM operations.[3] Many commenters also support the proposed technical and operational changes. Several parties support extending the routine licensing of ESIMs into the Ka-band.[4] Iridium, however, expresses concerns with this proposal,[5] which are addressed below. As discussed in this decision, we generally adopt many of the changes proposed in the *ESIMS NPRM.*

We proposed to bring all the technical, operational and coordination requirements for blanket licensed-ESV, VMES and ESAA earth stations that are linked to GSO FSS space stations under one umbrella rule section, § 25.228, applicable to ESIMs generally. We grouped ESIM requirements into the following categories: (1) Core rules (*i.e.* those applicable to all ESIMs); (2) vehicle-type specific[6] rules that apply across multiple frequency bands; (3) frequency-band specific status and coordination rules; and (4) vehicle-type specific rules that apply to a single frequency band. In this Order, we adopt changes within all of these subparts to accomplish our goal of simplifying and streamlining the ESIMs rules.

Following the structure of the *ESIMs NPRM,* we first address proposals involving changes in more than one rule section and then address proposed changes in the remaining rules in the order in which they appear in part 25.

Definitions

As proposed in the *ESIMs NPRM,* we amend several current definitions and add new definitions to our rules to provide greater clarity regarding the operation of earth stations in motion with GSO FSS space stations.[7] In response to the proposed changes to the definitions in the *NPRM,* commenters uniformly support the changes discussed below.

Definition of ESIMs. We adopt a definition for ESIMs in § 25.103.[8] ESIM is defined to mean a term that collectively designates ESVs, VMESs and ESAAs, which are already defined in § 25.103.[9]

Revised Definition of Blanket License. We adopt the proposal to change the definition of Blanket License in § 25.103 to refer to the type of satellite service in which the earth station operates, *i.e.,* FSS or MSS rather than the type of earth station, *i.e.,* fixed or mobile.[10] Changing the earth-station categorization in this definition to FSS and MSS better reflects the types of stations that can be licensed to operate anywhere in a geographic area specified in the license. Additionally, we adopt other minor rewording for clarity.

Definition of Network Control and Monitoring Center (NCMC). We also adopt the proposed definition of Network Control and Monitoring Center in § 25.103.[11] An NCMC, as used in the part 25 rules, is a facility that has the capability to remotely control earth stations operating as part of a satellite network or system.[12]

Eliminating Cross-References in Revised Definitions. We revise the definitions of VMES and ESAA to eliminate cross-references to rule sections (§§ 25.226 and 25.227 respectively) that we are deleting in this Report and Order.[13] Similarly, any cross-references to those deleted sections elsewhere in the rules are deleted as well.[14] Furthermore, we revise the definitions of routine processing and a two-degree compliant space station in § 25.103 to remove a cross-reference to § 25.138(a), because we are consolidating § 25.138(a) into § 25.218(i), as explained below.

Incorporating § 25.138 Into § 25.218, and Extending the Applicability of § 25.218 to the Conventional Ka-Band and ESIMs

In the *ESIMs NPRM,* the Commission proposed moving the conventional Ka-band provisions from § 25.138 into similar paragraphs of § 25.218.[15] The Commission also proposed applying § 25.218 to all applications for fixed and temporary-fixed FSS earth stations transmitting to geostationary space stations in the conventional or extended C-band or Ku-band, or the conventional Ka-band, and to all applications for ESIMs in the conventional C-, Ku-, or Ka-band,[16] except for applications proposing transmission of analog command signals at a band edge with bandwidths greater than 1 MHz or transmission of any other type of analog signals with bandwidths greater than 200 kHz.[17] Section 25.218 contains off-axis equivalent isotropically radiated power (EIRP) density envelopes for FSS earth stations transmitting to GSO FSS space stations in the conventional C-band, extended C-band, conventional Ku-band, or extended Ku-band.[18] Earth stations in these frequency bands that comply with these envelopes are considered ''two-degree-spacing compliant,'' and the operators of their target space stations are not required to coordinate the operation of these earth stations with operators of nearby space stations. As proposed in the *NPRM,*[19] we merge the off-axis EIRP density provisions of § 25.138 into § 25.218, thus extending the applicability of § 25.218 to conventional Ka-band GSO FSS earth stations.[20] Commenters support adoption of a consolidated rule that eliminates duplicative references to the off-axis EIRP spectral density limits and that would apply a single set of limits across all types of FSS earth station, including those on mobile platforms.[21]

Similarly, for organizational coherence, the Commission proposed making the conventional Ka-band requirements in § 25.138(f), which hold blanket licensees responsible for operations of transceivers operating under their license, applicable to earth station licensees in all frequency bands.[22] We will place this requirement in new § 25.290,[23] and eliminate the

[3] AC BidCo Comments at 2. AC BidCo holds an ESAA license that is used by its affiliate Gogo Inc to provide inflight connectivity and wireless entertainment services for commercial and business fleets around the world. *Id.* at 1–2.

[4] *See, e.g.,* Inmarsat Reply Comments at 1.

[5] Iridium Comments at 12.

[6] ''Vehicle-type specific'' means applicable only to ESAA, to ESV, or to VMES.

[7] *See NPRM,* 32 FCC Rcd at 4242–43, paras. 8–14.

[8] 47 CFR 25.103.

[9] *Id.*

[10] *NPRM,* 32 FCC Rcd at 4242–43, para. 10.

[11] *Id.* at 4243, para. 11.

[12] As such, an NCMC would constitute a ''remote control point'' as that term is used in the part 25 rules (*see, e.g.,* 47 CFR 25.271(b), 25.272(d)(1)).

[13] The technical and operational rules in §§ 25.226 and 25.227 are being consolidated in § 25.228, and the application rules are being consolidated in § 25.115. *See* paras. 0–0 and 67–0 *infra.*

[14] While we also moved the §§ 25.221 and 25.222 operating requirements for ESVs under the same umbrella that covers VMESs and ESAAs (*i.e.,* the umbrella of the proposed § 25.228 for ESIMs), the § 25.103 definition of ESVs does not need to be revised to eliminate any outdated cross-references because it does not now contain any cross-references.

[15] *NPRM,* 32 FCC Rcd at 4243–44, para. 15.

[16] *See* 47 CFR 25.103. The ''extended C-band'' refers to the 600–3700 MHz (space-to-Earth), 5850–5925 MHz (Earth-to-space), and 6425–6725 MHz (Earth-to-space) FSS frequency bands, and the ''conventional Ka-band'' refers to the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) frequency bands, which the Commission has designated as primary for GSO FSS operation. *Id.*

[17] *Id.* at para. 18.

[18] We note that the rules do not currently provide for ESIM operations in the extended C- band.

[19] *NPRM,* 32 FCC Rcd at 4243–44, para. 15.

[20] *See* 47 CFR 25.218(i). This consolidation of rules does not involve any change to existing off-axis EIRP spectral density limits.

[21] *See, e.g.,* Boeing Comments at 3; Inmarsat Comments at 3; and ViaSat Comments at 5–6.

[22] *NPRM,* 32 FCC Rcd at 4244, para. 17.

[23] In the *NPRM,* we proposed placing the requirements in new § 25.289. *See NPRM,* 32 FCC Rcd at 4244 para. 17. Because the Commission subsequently used § 25.289 to adopt rules governing the protection of GSO networks by NGSO systems, we instead adopt these requirements as part of new § 25.290.

cross-reference to § 25.138.[24] The Commission proposed that § 25.290 would also include the rule contained in § 25.287(d), which imposes the same requirement on licensees of mobile transmitters or transceivers operating in some Mobile-Satellite Service frequencies, allowing that that § 25.287(d) be removed.[25] Commenters broadly support these streamlining reorganizational moves which we adopt.[26]

Reorganizing and Streamlining the Technical, Operational and Coordination Requirements

Core ESIM Rules

In the *ESIMs NPRM,* the Commission sought comment on combining the core ESIMs rules that were essentially the same for each type of ESIM.[27] As both Boeing and the Joint Commenters note, the ''core'' rules governing ESVs, VMESs, and ESAAs are nearly but not quite identical, which creates unnecessary confusion for applicants and operators.[28] The Commission proposed to amend the core rules, where necessary, to create uniformity. Specifically, for rules related to the Commission's GSO FSS two-degree orbital spacing policy, control of operating ESIMs, operational reports, and electromagnetic radiation safety, the Commission proposed substantive changes in some cases to eliminate unnecessary variations across types of ESIMs.[29] As proposed in the *NPRM,* we also eliminate unnecessary duplication of rules across different rule sections.[30] These changes are widely applauded by commenters.[31] In the discussion to follow, we explain the substantive changes to the following areas of our ESIM rules: (1) Antenna pointing accuracy requirements, (2) EIRP density limits, (3) the self-monitoring (self-diagnostics) requirement, (4) the network control and monitoring center requirement, (5) logging requirements, and (6) the installation requirements related to radiation safety.

Antenna Pointing Accuracy Requirement. As explained in the *ESIMs NPRM,* the definition of theta as revised by the *2015 Second Report and Order* obviates the need for an antenna pointing accuracy requirement, because the limit on off-axis EIRP density toward adjacent satellites is fixed regardless of the direction in which the earth station antenna is pointed.[32] Therefore, the Commission proposed to eliminate the antenna pointing accuracy requirement contained in the individual ESV, VMES, and ESAA rules in §§ 25.221, 25.222, 25.226, and 25.227.[33] Most commenters support eliminating this requirement.[34] ViaSat notes that it is now well-established in the industry and in the Commission's precedent that GSO FSS spectrum resources can be used for service to mobile platforms without adversely changing the operating environment created by a traditional FSS earth station.[35] ViaSat further states that ''commercially available pointing mechanisms enable transmissions from these earth stations to remain focused on the desired GSO FSS space station even while the earth station is mounted on a moving platform. These technologies have been proven to be reliable through almost two decades of successful coexistence.'' [36]

We adopt the proposal to eliminate the antenna pointing requirement. ESIM transmissions must remain within our off-axis EIRP density limits under all operating conditions. As discussed above,[37] these limits are specified at off-axis angles measured with respect to a vector from the earth station to the target satellite, not with respect to the direction the antenna is pointed. Thus, it is unnecessary for the Commission to prescribe limits on ESIM antenna pointing accuracy. By eliminating the antenna pointing accuracy requirement but maintaining the off-axis EIRP density limits, we give ESIM operators more flexibility in anomalous situations, because they can meet the off-axis EIRP density limits either by maintaining accurate antenna pointing or by reducing EIRP density when the antenna is mispointed, while continuing to protect adjacent-band operations.[38]

Off-Axis EIRP Density Limits. In the *ESIMs NPRM,* the Commission noted that the off-axis EIRP density limits rule, § 25.218, applied to applications for GSO FSS earth stations at fixed locations, but specifically excepted applications for ESVs, VMESs, and ESAAs.[39] However, the numerical EIRP density limits over each specified angular range and the definition of θ in § 25.218 are the same as those for the same frequency bands in the individual ESIM §§ 25.221, 25.222, 25.226, and 25.227. Thus, to streamline the ESIMs rules, we cross-reference the off-axis EIRP density limits that already exist in § 25.218. And because the conventional Ka-band off-axis EIRP density limits currently in § 25.138 are merged into § 25.218, we only need to cross-reference § 25.218 to cover all of the frequency bands in which our rules provide for ESIM operations. Most commenters are in favor of these changes.[40]

One commenter, CTIA, expresses concern that relaxing the off-axis EIRP density limits may unintentionally limit the ability for FSS and Upper Microwave Flexible Use Service (UMFUS) to coexist.[41] CTIA asserts that knowledge of the precise off-axis EIRP density from an FSS earth station is a key component in determining the interference margin between ESIMs in the presence of terrestrial operations in the adjacent spectrum bands.[42] CTIA's concerns, however, are misplaced since the Commission is not relaxing the off-axis EIRP density limits for ESIMs.

Shutdown Requirements. The shutdown requirements contained in the individual ESIM sections require

[24] 47 CFR 25.290.

[25] We also proposed to retain the exception for analog video earth station applications.

[26] *See, e.g.,* Inmarsat Comments at 3.

[27] *NPRM,* 32 FCC Rcd at 4245, para. 20.

[28] *See* Boeing Comments at 2; Joint Commenters at 3.

[29] *NPRM,* 32 FCC Rcd at 4245–52, section C.

[30] *Id.* at 4243–44, paras. 19–20.

[31] *See, e.g.,* AC BidCo Comments at 2; Inmarsat Comments at 2; Joint Commenters at 1; Telesat Comments at 2–3; ViaSat Comments at 4–5.

[32] *NPRM,* 32 FCC Rcd at 4246, para. 22 (referencing *Comprehensive Review of Licensing and Operating Rules for Satellite Services,* IB Docket No. 12–267, Second Report and Order, 30 FCC Rcd 14713, 14755, para. 115 (2015) (*2015 Second Report and Order*)). This is the same as the approach taken by the ITU in Resolution 156 (WRC–15), which prescribes the operating conditions for ESIMs communicating with FSS space stations in the 19.7–20.2 GHz and 29.5–30 GHz frequency bands. In that resolution, the off-axis angle theta is defined as the angle ''from the vector from the earth station antenna to the associated satellite.'' *See Final Acts of WRC–15* at 248. Resolution 156 does not contain any antenna pointing accuracy requirements, because its off-axis EIRP density limits, like those in § 25.218 of the Commission's rules, are independent of the direction the ESIM antenna is pointed. *See id.* at 4246, fn. 33.

[33] *NPRM,* 32 FCC Rcd at 4246, para. 22. As noted in the *NPRM,* the definition of theta was revised by the *2015 Second Report and Order.* The definition in §§ 25.221, 25.222, 25.226, and 25.227 paragraph (a)(1)(i)(A) formerly read ''theta (θ) is the angle in degrees from the line connecting the focal point of the antenna to the orbital location of the target satellite.'' The minor rewording of the definition takes into account the fact that not all earth stations use feedhorn-reflector type antennas with focal points, and the fact that earth station antennas pointed toward GSO FSS satellites are usually pointed to the assigned location of the satellite, and do not track the actual position of the target satellite at any given time. The same definition of theta is now used in § 25.209, 47 CFR 25.209. *See id.* at 4246, fn. 32.

[34] AC BidCo Comments at 3–4; Hughes Comments at 3; Inmarsat Comments at 3; Joint Commenters at 4; ViaSat Comments at 4, 7.

[35] ViaSat Comments at 2.

[36] ViaSat Comments at 7.

[37] *See* para. 0 and n.9 *supra.*

[38] Joint Commenters Comments at 4.

[39] *NPRM,* 32 FCC Rcd at 4247, para. 23.

[40] *See, e.g.,* Boeing Comments at 3; Inmarsat Comments at 3; ViaSat Comments at 5–6; AC BidCo Reply Comments at 2.

[41] CTIA Reply Comments at 4.

[42] *Id.*

cessation of emissions for ESV, VMES, and ESAA transmitters based on detection of antenna mispointing.[43] Consistent with the proposed changes regarding antenna mispointing, the Commission proposed to replace the shutdown requirements with provisions in paragraphs (b) and (c) of § 25.228 requiring cessation or reduction of emissions in the event that the ESIM or its associated network control and monitoring system detects that the ESIM has exceeded or is about to exceed the off-axis EIRP density limits.[44] Commenters generally support this proposal, which we adopt.[45]

Contention Protocols. The Commission proposed that § 25.228 would not include the requirement in paragraphs (a)(4) of §§ 25.226 and 25.227 that VMES and ESAA applicants that plan to use a contention protocol in the uplink transmissions of their ESIMs certify that their use of the contention protocol is reasonable.[46] This requirement is already contained in § 25.115(i), and applies by its terms to applications for ESIMs.[47] No commenters object to this revision, which is adopted.[48]

Point of Contact in the United States. The Commission proposed to consolidate the requirement that there be a point of contact in the United States with the authority and ability to cease all emissions into the platform-specific rules for ESVs, VMESs, and ESAAs in § 25.228.[49] No commenters take exception to this proposal, which we adopt.[50]

Data Logging Requirement. The Commission proposed to eliminate the data logging requirements that are in paragraphs (a)(5) of §§ 25.221 and 25.222 for C- and Ku-band ESV operators and in paragraphs (a)(6) of §§ 25.226 and 25.227 for Ku-band VMES and ESAA operators.[51] The Commission has never requested the logs for the vehicle location, transmit frequency, channel bandwidth, and target satellite of ESIM transmissions from an ESIM operator. Commenters almost uniformly report never having been asked for this data and were consistent in their support for eliminating the requirement.[52] For example, Hughes comments that the Commission should find that the data logging requirements imposed on ESIM operators are onerous and unnecessary and, accordingly, should be eliminated.[53] In its reply comments, ViaSat notes that HNS, Gogo, Inmarsat, Kymeta, Intelsat and Boeing confirm ViaSat's experience and understanding that ESIM location information has been unnecessary because there does not appear to have been any suspected cases of interference.[54] However, SES and O3b state in reply comments that it had used this data to resolve interference events, without providing specifics.[55] SES and O3b requests that if the Commission chooses to eliminate the requirement, we should remind ESIM operators that they must cooperate fully to resolve instances of harmful interference.[56] Section 25.274(g) of the Commission's rules already imposes this requirement for all operators.[57] Given the experience with several years of ESIM operations, we find that the logging requirement is no longer necessary.

Remote Monitoring and Control Requirement. The Commission proposed to incorporate a remote monitoring and control requirement in our proposed § 25.228(c), and make it applicable to all types of ESIMs.[58] The Commission proposed that each remote terminal must be (1) monitored and controlled by a network control and monitoring center (NCMC) or equivalent facility, (2) that each remote terminal must comply with ''disable transmission'' commands from the NCMC, and (3) that the NCMC must monitor the operation of each ESIM terminal in its network, and transmit a ''disable transmission'' command to a remote terminal that malfunctions in such a way as to cause unacceptable interference to another radiocommunication station. These requirements are spread throughout the existing rule sections.[59] While the Commission did not include the 100 millisecond response time for complying with a ''disable transmission'' command in the text of the proposed rules, the Commission did pose the question as to whether it should be maintained.[60] Commenters support the proposal to harmonize the requirements and maintain the 100 millisecond response time.[61] For example, ViaSat notes that the capability of NCMCs to command individual ESIMs to cease or reduce emissions within 100 milliseconds if the aggregate off-axis EIRP density limits are being exceeded is already required in the separate service rules for each type of ESIM and has not been a barrier to ESIM deployment.[62] Thus, ViaSat says incorporating a requirement into the consolidated rule to monitor the aggregate power density levels of all ESIMs in the network would not increase regulatory burdens or otherwise impede future deployment of ESIMs.[63] To the contrary, ViaSat points out that this requirement is necessary to ensure that ESIM networks that use variable power control are capable of complying with the off-axis EIRP density limits in the aggregate, and thus ensuring that adjacent satellite networks are adequately protected.[64]

In contrast, Telesat asserts that specific NCMC capability requirements regarding aggregate off-axis EIRP spectral density limits are unnecessary and suggests that one possible approach for network operators to ensure compliance with aggregate off-axis EIRP spectral density limits is through the methodology in ITU Resolution 156.[65] Telesat argues that network designers and operators should decide whether to monitor aggregate off-axis spectral density limits, but should not be required to do so.[66]

[43] *See* paragraphs (a)(1)(iii) of §§ 25.221, 25.222, 25.226, and 25.227.

[44] *NPRM,* 32 FCC Rcd at 4247, para. 25.

[45] Inmarsat supports the Commission's proposed shutdown and monitoring requirements, but it disagrees that ESIM applicants should have to ''demonstrate how that requirement will be met. Inmarsat Comments at 4. This is discussed further in paras. 0–0 *infra. See also* Joint Commenters Comments at 4; ViaSat Reply Comments at 2 (concurring with Inmarsat's comments).

[46] *NPRM,* 32 FCC Rcd at 4248, para. 28.

[47] The duplication would be eliminated by deleting §§ 25.226 and 25.227 in their entireties, as proposed.

[48] *See, e.g.,* Inmarsat Comments at 4 (stating that Inmarsat supports the Commission's proposals regarding contention protocols).

[49] *NPRM,* 32 FCC Rcd at 4248, para. 29.

[50] *See, e.g.,* Inmarsat Comments at 3 (noting that ''[t]hese rule revisions will promote uniformity and efficiency.'').

[51] *NPRM,* 32 FCC Rcd at 4248, para. 30.

[52] AC BidCo Comments at 4; Boeing Comments at 5; Hughes Comments at 4; Inmarsat Comments at 3; Joint Commenters at 5; Telesat Comments at 6; and ViaSat at 4, 7–8; AC BidCo Reply Comments at 2–3.

[53] Hughes Comments at 4.

[54] ViaSat Reply Comments at 4.

[55] SES and O3b Reply Comments at 9–10.

[56] *Id.*

[57] 47 CFR 25.274(g).

[58] *NPRM,* 32 FCC Rcd at 4248–49, para. 31.

[59] The monitoring and control requirements were in paragraphs (a)(2)(iii) and (a)(3)(iii) of §§ 25.221, 25.222, 25.226, and 25.227; and 25.227(a)(10).

[60] *See NPRM,* 32 FCC Rcd at 4249, para. 33 (addressing cessation of uplink transmissions for VMES).

[61] *See, e.g.,* Hughes Comments at 2; Inmarsat Comments at 4; Telesat Comments at 7; and ViaSat Comments at 7.

[62] ViaSat Reply Comments at 8.

[63] *Id.*

[64] ViaSat Reply Comments at 8.

[65] Telesat Comments at 7. Telesat states that under this methodology, compliance with the aggregate limit would be maintained by limiting the power density of each individual earth station by 10 log(N) dB, where N is the ''number of earth stations in motion that are in the receive satellite beam of the associated satellite and that are expected to transmit simultaneously on the same frequency.'' *Id.*

[66] *Id.*

ViaSat asserts that Telesat's proposal is flawed due to the fact that Resolution 156 is premised on a requirement that an NCMC notify individual terminals to cease operations through ''disable transmission'' commands, and that means individual earth stations must be controlled by an NCMC in any event.[67] According to ViaSat, the mechanism for controlling individual earth stations to manage aggregate off-axis EIRP density still is necessary under Resolution 156, both to calculate the apportioned power levels based on the number of operating terminals and to monitor the aggregate of the apportioned values, and command earth stations to adjust their levels or cease transmitting as required.'' [68] We agree with ViaSat and further note that Note 4 of Annex 1 to ITU Resolution 156 explicitly addresses the need of controlling potential aggregate interference. ViaSat also states that the 10 log(N) approach, considered in Note 3 of Annex 1 to ITU Resolution 156 and not requiring controlling aggregate off-axis EIRP density is inappropriate for ESIMs using advanced modulation and coding techniques. We agree with ViaSat on this point. These techniques are intended to cope with propagation impairments specific to the location of each ESIM or for other network efficiency considerations. As a result, such ESIMs may intentionally transmit with different EIRP density levels.[69] For those reasons, we do not agree with Telesat's proposal to eliminate the need for monitoring the aggregate off-axis EIRP density.

We also agree with ViaSat, Hughes and others that retaining the monitoring and control requirements, consolidating them into the ESIM section and harmonizing them for all types of ESIMs does not increase the regulatory burden. We also agree with commenters that the capabilities provided by the NCMC per these requirements are essential for effective spectrum sharing. We therefore adopt the proposed incorporation of the requirements, including the 100 millisecond response time, into § 25.228 and the application of those requirements to all types of ESIMs.

Self-Monitoring Requirement. Section 25.227(a)(11) requires that ESAA terminals be self-monitoring and capable of automatically ceasing transmission. § 25.227 paragraphs (a)(1)(iii), (a)(2)(ii), and (a)(3)(ii), and corresponding paragraphs in §§ 25.221, 25.222, and 25.226 contain similar self-monitoring requirements. The Commission proposed to make this requirement generally applicable to all types of ESIMs and to codify it in § 25.228(b).[70] Commenters are also supportive of extending this requirement to all ESIMs in the unified ESIM rule.[71] We adopt the proposal to codify the self-monitoring requirement in § 25.228(b).

Cessation of Uplink Transmissions Upon Loss of Downlink Signal. Sections 25.226(a)(9) and 25.227(a)(9) state that each VMES or ESAA terminal must automatically cease transmitting within 5 seconds or 100 milliseconds, respectively, upon loss of reception of the satellite downlink signal or when it detects that unintended satellite tracking has happened or is about to happen. In the *ESIMs NPRM,* the Commission proposed to eliminate these rules as redundant [72] because § 25.271(g) applies by its terms to all types of ESIMs, and its provision with regard to loss of synchronization to signals from the target satellite is general enough to cover all situations of interest. Boeing and other commenters support this proposal.[73] Specifically, Boeing states that the ''Commission's recent adoption of § 25.271(g) adequately addresses this requirement for all earth stations operating with FSS networks without imposing a potentially arbitrary time limit (*i.e.,* five [seconds] or a tenth of a second) for meeting the requirement.'' [74] We affirm that § 25.271(g) stands in the place of these vehicle-specific requirements, and delete §§ 25.226(a)(9) and 25.227(a)(9).

ESIM Installation Requirement for Radiation Hazard Mitigation. Our rules require that all VMES and ESAA licensees ensure installation of VMES or ESAA terminals on vehicles by qualified installers who have an understanding of the antenna's radiation environment and use those measures best suited to maximize protection of the general public and persons operating the vehicle and equipment.[75] The Commission proposed extending this requirement to ESVs operating in the C-, Ku- and Ka-bands, because the same basic rationale for the VMES and ESAA requirement appears to apply equally to ESVs—*i.e.,* to ensure protection of members of the public (including those manning the vessels and operating the equipment), who may be exposed to hazardous radiation environments on vessels as well as on or in the vicinity of land vehicles and aircraft.[76] Accordingly, the Commission proposed to consolidate the requirement into paragraph (d) of the proposed § 25.228.[77] The Commission also proposed cross-referencing § 1.1310 Table 1 of the Commission's rules, rather than specifying the maximum permitted radiation exposure level in § 25.228(d).[78] As with other organizational changes, commenters are supportive.[79] We therefore adopt these proposals.

Reorganizing and Streamlining Footnotes to the Table of Frequency Allocations

In the *ESIMs NPRM,* we proposed to reorganize and consolidate the sections in part 25 of the Commission's rules, including technical and operational as well as application rules, for the three types of ESIMs. This reorganization included updates to the Commission's Table of Frequency Allocations as necessary to reflect the changes we adopt in this Order. We find that this reorganization can better be accomplished with a few additional, non-substantive organizational changes in the non-Federal Government (NG) Footnotes to the Table of Frequency Allocations.[80]

Specifically, we combined the text of footnote NG55 with part of the text from footnote NG52 which addresses ESIM sub-bands. Based on the number of the international footnote for ESIMs, 5.527A, the resulting footnote is numbered as NG527A.[81] As a result of combining ESIM-related substantive issues in the new NG527A, we additionally move some text in NG52 to new footnote NG527A. Additionally, we combine the text of revised footnote NG180 with the existing text of NG181, and numbered the resulting footnote as NG457A.[82] Finally, based on these revisions, we remove footnotes NG55, NG180, and NG181. The substantive

[67] ViaSat Reply Comments at 7.

[68] *Id.*

[69] *Id.*

[70] *NPRM,* 32 FCC Rcd at 4249, para. 32.

[71] *See, e.g.,* Hughes Comments at 2; Inmarsat Comments at 4; ViaSat Comments at 7.

[72] *NPRM,* 32 FCC Rcd at 4249, para. 33.

[73] Boeing Comments at 5; Inmarsat Comments at 4.

[74] Boeing Comments at 6.

[75] The rules also require that a VMES or ESAA terminal exhibiting radiation exposure levels exceeding 1.0 mW/cm^2 in accessible areas, such as at the exterior surface of the radome, must have a label attached to the surface of the terminal warning about the radiation hazard and must include thereon a diagram showing the regions around the terminal where the radiation levels could exceed 1.0 mW/cm^2.

[76] *NPRM,* 32 FCC Rcd at 4249, para. 34.

[77] *Id.*

[78] *Id.*

[79] AC BidCo Comments at 3; Inmarsat Comments at 4.

[80] 47 CFR 2.106. We note that these revisions are in addition to the changes proposed in the *NPRM,* such as to US133, and are adopted herein.

[81] *See* Appendix B—Final Rules.

[82] As with the new ESIM footnote, NG527A, the numbering for the ESV footnote, NG457A, is based on the number of the international footnote for ESVs in the 5925–6425 MHz band, 5.457A.

content in those footnotes is fully covered by the other revisions. We note below where these changes impact other revisions.

Vehicle-Type Specific Rules Applicable Across Multiple Frequency Bands

ESV Requirements. As explained in the *ESIMs NPRM,* there are two rule sections that address specific requirements for ESV operators that were adopted to codify section 306 of the Communications Act.[83] Specifically, paragraphs (a)(6) and (a)(7) of §§ 25.221 and 25.222 require ESV operators, licensed by the FCC that are communicating with ESVs on vessels registered outside the United States to maintain detailed information on each vessel's country of registry and a point of contact within the foreign administration responsible for licensing the ESV, and to control ESVs using a hub earth station located in the United States. However, a U.S.-licensed ESV may operate under control of a hub earth station located outside the United States, provided that the ESV operator maintains a point of contact in the United States that can make the ESV cease transmitting if necessary. Because paragraphs (a)(6) and (a)(7) of §§ 25.221 and 25.222 are statutorily based, we retain these requirements in paragraph (e)(3) and paragraph (e)(1), respectively, of § 25.228.

We also discontinued our use of the term ''ESV hub operators'' and ''hub earth stations'' for greater clarity. In their place, in our revised rules, we use the term ''network control and monitoring center'' (NCMC) [84] to better reflect the nature of the functions performed by such facilities. Commenters generally offer approval of this ministerial change.[85]

VMES Requirements. As the Commission noted in the *ESIMs NPRM,* there are currently no rules in part 25 of the Commission's rules that apply to VMES terminals in more than one frequency band,[86] because VMES rules in part 25 only apply to Ku-band VMESs. In keeping with our goal to streamline rules for all ESIM operators, we did not propose in the *NPRM,* and do not adopt here, any VMES-specific rules that would apply across all frequency bands.

ESAA Requirements. There are four sections of § 25.227 that are specific to ESAA operators in the Ku-band. There are no objections to our proposal to reorganize these ESAA requirements, either by eliminating redundant sections or incorporating them into § 25.228.[87]

First, § 25.227(a)(12) provides that ESAA applicants that comply with the established off-axis EIRP spectral-density limits may request Permitted List authority. We adopt the proposal to eliminate this rule section because this flexibility is already provided to applicants by § 25.115(k)(1).[88]

Next, we adopt the proposal to keep the requirement that is currently in § 25.227(a)(14) and move it into § 25.228(g)(2).[89] This requirement states that all ESAA terminals operating in U.S. airspace, whether on U.S.-registered civil aircraft or non-U.S.-registered civil aircraft, must be licensed by the Commission. It further states that all ESAA terminals on U.S.-registered civil aircraft operating outside of U.S. airspace must be licensed by the Commission, except as provided by section 303(t) of the Communications Act.[90] We also adopt the proposal to extend this requirement to apply to all Ka-band ESAA terminals.

Section 25.227(a)(15) states that for ESAA systems operating over international waters, ESAA operators will certify that their target space station operators have confirmed that proposed ESAA operations are within coordinated parameters for adjacent satellites up to 6 degrees away on the geostationary arc. In the *ESIMs NPRM,* the Commission pointed out that the provisions of §§ 25.140 and 25.220, which apply to U.S. satellites and earth stations, and § 25.137, which also applies to foreign-licensed points of communication, make § 25.227(a)(15) redundant.[91] As such, we eliminate this redundancy deleting this section and not bringing this requirement into the ESIM rule section.

Finally, we adopt the proposal to move the requirements of § 25.227(a)(16) to new § 25.228(g)(3), with a minor revision to make the requirement clearly imperative.[92] Specifically, the provision requires that prior to operations within the foreign nation's airspace, the ESAA operator must ascertain whether the relevant administration has operations that could be affected by ESAA terminals, and must determine whether that administration has adopted specific requirements concerning ESAA operations. Further, in moving these requirements to § 25.228(g)(3), we extend the existing requirement to apply to Ka-band ESAA operators. Inmarsat argues that the provision in paragraph (g) of § 25.228 that states that an ESAA terminal in foreign airspace must operate under the Commission's rules or those of the foreign operator, whichever are more constraining, should be eliminated.[93] We disagree. The Commission's rules are designed, *inter alia,* to protect adjacent satellites spaced two degrees apart from interference from earth stations communicating with other satellites. In some cases, the satellites protected from interference by these rules are U.S.-licensed satellites serving foreign territory, where the relevant administrations may not have comparable rules.

Frequency-Band Specific Status and Coordination Rules

As proposed in the NPRM and described in detail below, while moving the ESIM technical and operational requirements into a unified rule section, we eliminate redundancies and harmonize language whenever possible. In the separate ESIM sections, there are frequency-band specific rules for ESVs, VMESs and ESAAs in the conventional and extended Ku-bands.[94] The Commission proposed to eliminate some of these requirements, which were redundant with other provisions in part 25.[95] The specific changes are explained below. We retain the provisions in paragraphs (c) and (d) of §§ 25.222, 25.226, and 25.227 which were not redundant and are now included in § 25.228.

Specifically, we eliminate the provision included in both §§ 25.226(a)(8) and 25.227(a)(8), because this provision is redundant with the one in § 25.209(c)(1). This requirement provides that in the relevant bands,[96] VMES and ESAA terminals receive protection from interference caused by space stations other than the target space station only to the degree to which harmful interference would not be expected to be caused to a hypothetical earth station employing an

[83] *NPRM,* 32 FCC Rcd at 4250, para. 36. *See also* 47 U.S.C. 306.

[84] As noted in paragraph 0 *supra,* we adopt the definition of network control and monitoring center (NCMC) in § 25.103.

[85] Inmarsat Comments at 6.

[86] *NPRM,* 32 FCC Rcd at 4250, para. 39.

[87] Our decision to extend the requirements for ESAA operations to the conventional Ka-band is discussed further in the section on Ka-band ESIM rules.

[88] *NPRM,* 32 FCC Rcd at 4250, para. 40.

[89] *NPRM,* 32 FCC Rcd at 4250–51, para. 41.

[90] 47 U.S.C. 303(t).

[91] *NPRM,* 32 FCC Rcd at 4251, para. 42.

[92] *NPRM,* 32 FCC Rcd at 4251, para. 43.

[93] Inmarsat Comments at 7.

[94] Under the adopted § 25.228, there are Commission rules for ESIMs operation in four bands: The conventional C-band and the conventional and extended Ku-bands and conventional Ka-band.

[95] *NPRM,* 32 FCC Rcd at 4251, para. 44.

[96] Specifically, VMES terminal receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth) and 11.7–12.2 GHz (space-to-Earth) bands, and ESAA terminal receiving in the 11.7–12.2 GHz (space-to-Earth) bands do not receive protection from interference.

antenna conforming to the reference patterns defined in § 25.209(a) and (b) and stationary at the location at which any interference occurred.

Similarly, we eliminate the provision in §§ 25.222(a)(8), 25.226(a)(7) and 25.227(a)(7), which are redundant with new footnote NG527A to § 2.106 of the Commission's rules.[97] This footnote states that in the 10.95–11.2 GHz (space-to-Earth) and 11.45–11.7 GHz (space-to-Earth) frequency bands ESVs, VMESs and ESAAs must not claim protection from transmissions of non-Federal stations in the fixed service.

Finally, the Commission noted in the *ESIMs NPRM* that there are two sets of coordination requirements for Ku-band ESIMs, which are contained in paragraphs (c) and (d) of §§ 25.222, 25.226 and 25.227.[98] Paragraphs (c) in these rule sections address the coordination requirements related to the protection of the NASA Tracking and Data Relay Satellite System (TDRSS) in the 14.0–14.2 GHz frequency band. Paragraphs (d) address coordination requirements designed to protect the Radio Astronomy Service (RAS) in the 14.47–14.5 GHz frequency band. Paragraphs (c), as well as paragraphs (d), in different rule sections, while covering the same frequency bands and coordination requirements to protect TDRSS or RAS operations, as applicable, are worded slightly differently in each rule section. We move these requirements to § 25.228(j), with non-substantive word changes to harmonize the language for the requirements.[99]

Vehicle-Type Specific Rules Applicable to a Single Frequency Band

Part 25 includes rules that are particular to the type of ESIM in a specific frequency band. For example, C-band ESVs and Ku-band ESAAs have requirements that are unique to the combination of type of earth station and the particular frequency band in which it operates. The Commission has never licensed C-band VMES and ESAA terminals, and did not propose to adopt rules for these terminals in this proceeding.

C-band ESV Specific Requirements. The Commission proposed to retain and move several requirements that are unique to ESVs operating in the C-band to § 25.228(h).[100] Specifically, this proposal covered the provisions in paragraphs (a)(8), (a)(9), (a)(10), (a)(12), and (a)(13) of § 25.221 as written. No commenter addressed this proposal, and we have relocated these provisions to § 25.228 without changing the terms, as proposed.[101]

As noted in the *ESIMs NPRM,* rules were adopted in the *2005 ESV Order* to protect FS and FSS providers in the C-band while providing maximum flexibility to ESV operators.[102] Specifically, Section 25.221(a)(11) stated that ESVs while in motion do not receive interference protection from either terrestrial licensees or satellites. The Commission proposed to limit this provision only to terrestrial licensees. This updated provision is moved to § 25.228(h)(4). No commenters object to the proposal, which we adopt, to amend the second sentence of Non-Federal Government footnote NG180 of § 2.106 consistent with this change. As noted above, this amended footnote is combined with NG181 and moved to NG457A for better organization and consistency.[103]

Ku-Band ESAA Specific Requirements. Section 25.227(a)(13) contains specific requirements for Ku-band ESAA providers operating in international airspace within line-of-sight of the territory of a foreign administration.[104] These requirements are moved to § 25.228(i), with non-substantive word changes to harmonize the language to that of § 25.228.

Technical and Operational Requirements for Ka-band ESIMs

The Commission did not propose any specific technical or operational requirements for ESVs, VMESs, or ESAAs operating in the conventional Ka-band. The Commission stated that such ESIMs would be authorized subject to the requirements in § 25.115(n), which includes the requirement to comply with the earth station off-axis EIRP density limits in new § 25.218(i), unless the ESIM operations are coordinated under § 25.220.[105] This is similar to the blanket-licensing provisions for conventional Ka-band earth stations in § 25.138. The Commission proposed that conventional Ka-band ESVs would be required to comply with the requirements in new § 25.228(e), conventional Ka-band VMESs would be required to comply with the requirement in new § 25.228(f), and conventional Ka-band ESAAs would be required to comply with the requirements in new § 25.228(g). The Commission sought comment on any additional provisions that should be adopted for the operation of ESVs, VMESs, or ESAAs in the conventional Ka-band, such as minimum separation distances to protect the fixed and mobile services from ESV emissions, and/or power flux-density limits to protect the fixed and mobile services from ESAA emissions.[106]

The Commission also proposed to amend an existing footnote to the Table of Allocations to recognize the operation of ESIMs as an application of the FSS with primary status in the conventional Ka-band.[107] The Commission sought comment on its belief that ESIMs operating in the conventional Ka-band in accordance with its proposed rules would not pose more of a risk of interference to, nor require more interference protection from, other radiocommunication systems than other earth stations operating in the frequency band on a primary basis today.[108] The Commission has taken similar steps to clarify the primary status of C-band and Ku-band ESIMs.[109] Specifically, the Commission proposed to amend footnote NG55, which authorizes ESV, VMES, and ESAA use in the Ku-band, to include a portion of the Ka-band and to use the term ''ESIMs.'' [110] With the exception of the areas discussed below in the bands, 18.6–18.8 GHz, 29.25–29.3 GHz and 28.35–28.6, commenters generally supported these proposed changes.

29.25–29.3 GHz Band. In the 29.25–29.5 GHz band, GSO FSS operations and feeder links for the NGSO Mobile Satellite Service (MSS systems) are designated for co-primary usage. Iridium operates feeder links for its NGSO MSS system in the 29.1–29.3

[97] As noted above, we are moving the relevant text to NG527A from NG52 for organizational purposes.

[98] *NPRM,* 32 FCC Rcd at 4252, para. 47.

[99] 47 CFR 25.228(j).

[100] *NPRM,* 32 FCC Rcd at 4252–53, para. 49–50. The Commission has an open proceeding exploring additional uses of ''mid-band spectrum,'' including the 3700–4200 MHz portion of the C-band. *See Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz,* Notice of Inquiry, 32 FCC Rcd 6373 (2017); *Expanding Flexible Use of the 3.7–4.2 GHz Band,* Order and Notice of Proposed Rulemaking, FCC 18–91 (rel. July 13, 2018) (*Mid-band Proceeding*). Operation of ESIMs will be subject to any changes to the Commission's rules made as a result of Commission action in the *Mid-Band Proceeding.*

[101] Section 25.228(h).

[102] *NPRM,* 32 FCC Rcd at 4252, fn 52.

[103] *See* Appendix B—Final Rules.

[104] 47 CFR 25.227(a)(13).

[105] *NPRM,* 32 FCC Rcd at 4253, para. 52.

[106] *Id.*

[107] *NPRM,* 32 FCC Rcd at 4253, para. 53.

[108] As stated in the *NPRM,* the Commission already blanket licenses ubiquitously-deployed fixed earth stations in the conventional Ka-band under § 25.138; under the proposed rules ESIMs would have to comply with regulations designed to ensure that they do not cause more interference than fixed earth stations. *Id.* at 4253, fn 54.

[109] *See, e.g.,* 47 CFR 2.106, footnotes NG55, NG180, and NG181. As noted above, for better organization, NG180 and NG181 are now combined into NG457A.

[110] *See NPRM,* 32 FCC Rcd at 4253, para. 53.

GHz band.[111] Iridium urges the Commission not to authorize ESIMs operations in the 29.25–29.3 GHz band that is shared with Iridium feeder links.[112] Iridium claims that the addition of ESIM operations with GSO FSS space stations in this band segment ''would create an impractically complex sharing environment'' with its NGSO–MSS feeder link operations.[113] Iridium also argues that the satellite industry has not developed a method for determining appropriate exclusion zones around Iridium feeder-link earth stations, outside of which ESIM operations in the band segment will not cause harmful interference to Iridium satellite reception of feeder link uplink transmissions.[114] Iridium has three such feeder-link earth stations in the United States that are currently authorized to operate in the 29.25–29.3 GHz band: One in Tempe, Arizona; one in Fairbanks, Alaska; and one in Wahiawa, Hawaii.[115]

In response to Iridium's proposal to bar ESIM operations in the 29.25–29.3 GHz band, Inmarsat and ViaSat provided technical analyses of ESIM interference into Iridium feeder links that propose other approaches ESIM operators could take to coexist with Iridium in the subject band.[116] These analyses are designed to demonstrate how ESIMs transmitting in the 29.25–29.3 GHz band would not exceed the Iridium feeder link interference protection criteria even while operating in the vicinity of Iridium feeder link earth stations. ViaSat's analysis considers six ESAAs operating at distances of 0 and 100 kilometers from an Iridium feeder link earth station, and claims that the carrier-to-interference ratio of the Iridium feeder link signal is more than 30 dB for all but 0.0001 percent of the time.[117] Inmarsat's analysis computes an exclusion zone around an Iridium feeder link earth station within which ESIMs would not be allowed to operate in the 29.25–29.3 GHz band in order to avoid causing unacceptable interference to Iridium's feeder links.[118] Iridium challenged the analyses conducted by ViaSat and Inmarsat, claiming that some of the underlying assumptions are incorrect, and insisted that ESIM operation in the 29.25–29.3 GHz frequency band should not be allowed.[119] In response, ViaSat refined its analysis referred to in the Inmarsat and ViaSat Nov. 6 *Ex Parte* Letter, and claimed that, even under more conservative assumptions, no unacceptable interference would be caused to Iridium feeder links.[120] Similarly, Inmarsat opposed Iridium's arguments and insisted that its previous analysis was valid and even conservative.[121]

Subsequently, Iridium argued that the 50 megahertz under discussion between 29.25–29.3 GHz corresponded only to 5% of the total 2,000 megahertz of the conventional Ka-band spectrum where ESIM operation would be allowed and repeated its argument ''that the satellite industry has been unable to develop a method for coordinating NGSO feeder-links and ESIMs.'' [122] In response, ViaSat argued that channels commonly used to provide broadband service to aircraft have bandwidths of 80, 160 or 320 megahertz, and that a prohibition on using the 50 megahertz in 29.25–29.3 GHz would therefore have a disproportionate impact on the capacity of the satellite network.[123] In other words, according to ViaSat, decreasing the amount of spectrum available from 750 megahertz (in a 29.25–30 GHz band) to 700 megahertz (in a 29.3–30 GHz band) would preclude deployment of, for instance, a network that relies on two 320 megahertz channels and one 80 megahertz channel. Thus, ViaSat argues, the impact of not being able to use the band 29.25–29.3 GHz could be greater than simply reducing available spectrum by 50 megahertz, but could actually prevent providers from making full use of the conventional Ka-band. Later filings from Iridium and ViaSat further elaborated on their prior arguments.[124]

As an initial matter, coordination is required between GSO FSS and feeder links to MSS space stations that have co-primary status in the frequency band 29.25–29.3 GHz.[125] The Commission has previously stated that NGSO MSS applicants bear the burden of showing

[111] *Iridium Satellite LLC,* IBFS File No. SES–MOD–20060907–01680 (granted Mar. 29, 2007).

[112] Iridium Comments at 1–2. Iridium has since acknowledged that the Commission could allow ESVs and VMES in the band but requests that the Commission defer consideration of ESAAs operating in 29.25–29.3 GHz. Letters from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (filed Sept. 12, 2018) (Iridium Sept. 12 *Ex Parte* Letters); Letter from Robert M. McDowell, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (filed Sept. 19, 2018) (Iridium Sept. 19 Javed *Ex Parte* Letter) and Letter from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (filed Sept. 20, 2018) (Iridium Sept. 20 Bender *Ex Parte* Letter) In response to Iridium's new proposal, Inmarsat, ViaSat and SES assert that there is no material difference in the potential impact from an aeronautical ESIM and other ESIMs on the ground. Letter from Jack Wengryniuk VP, Regulatory and Market Access Inmarsat, Inc., Christopher J. Murphy Associate General Counsel, Regulatory Affairs and Daryl T. Hunter Chief Technical Officer, Regulatory Affairs ViaSat, Inc., and Petra A. Vorwig Senior Legal and Regulatory Counsel SES Americom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 18, 2018) (ESIM Operators Sept. 18 Joint *Ex Parte* Letter). *See also* Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 21, 2018) (ViaSat Sept. 21 *Ex Parte* Letter).

[113] Letter from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Sept. 25, 2017) (Iridium September 25, 2017 *Ex Parte* Letter).

[114] *Id.*

[115] These earth stations are licensed by the Commission under call signs E960131 (Tempe, AZ), E050282 and E060300 (Fairbanks, AK), which are licensed to Iridium, and E980049 (Wahiawa, HI), which is licensed to General Dynamics Satellite Communication Services, LLC.

[116] Letter from M. Ethan Lucarelli, Director, Regulatory and Public Policy, and Giselle Creeser, Director, Regulatory, Inmarsat, Inc., and John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 6, 2017) (Inmarsat and ViaSat Nov. 6 *Ex Parte* Letter).

[117] *Id.*

[118] *Id.*

[119] Letter from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Jan. 18, 2018) (Iridium Jan. 18 *Ex Parte* Letter).

[120] Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 5, 2018) (ViaSat Feb. 5 *Ex Parte* Letter).

[121] Letter from Giselle G. Creeser, Director, Regulatory, Inmarsat to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 16, 2018) (Inmarsat Feb. 16 *Ex Parte* Letter).

[122] Letter from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 22, 2018) (Iridium Mar. 22 *Ex Parte* Letter).

[123] Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 26, 2018) (ViaSat Mar. 26 *Ex Parte* Letter).

[124] Letter from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Apr. 11, 2018) (Iridium Apr. 11 *Ex Parte* Letter); Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Apr. 26, 2018) (ViaSat Apr. 6 *Ex Parte* Letter); Letter from Scott Blake Harris, Counsel to Iridium Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Jun. 28, 2018); Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 29, 2018) (ViaSat Aug. 29 *Ex Parte Letter*); Iridium Sept. 12 *Ex Parte* Letters; ESIM Operators Sept. 18 Joint *Ex Parte* Letter; Iridium Sept. 19 Javed *Ex Parte* Letter and Iridium Sept. 20 Bender *Ex Parte* Letter.

[125] While allocation of a given frequency band to a particular service on a ''primary'' basis entitles that service to protection against harmful interference from stations of a ''secondary'' service, ''co-primary'' services such as the NGSO MSS and GSO FSS in the 29.25–29.5 GHz band share that band on an equal basis and may not cause harmful interference to each other. *See* 47 CFR 2.104(d), 2.105(c).

that a new NGSO MSS feeder-link facility can share with uplinks to GSO FSS space stations.[126] The Commission is committed to being as spectrally efficient as possible, and has stressed that NGSO MSS uplink applicants must demonstrate that coordination with GSO FSS operation in the 29.25–29.3 GHz band is feasible, as required by paragraph (c) of § 25.258.[127] Based on the record before us, we do not believe that it is necessary to establish exclusion zones in order to protect Iridium space station feeder link reception. Iridium has previously acknowledged that the 29.25–29.3 GHz band is shared with GSO FSS networks.[128] Moreover, in a subsequent grant modifying Iridium's license, the International Bureau clearly restated Iridium's co-primary status with respect to GSO FSS networks.[129] Iridium questions the feasibility of implementing exclusion zones in which ESIMs must not operate in the 29.25–29.3 GHz band as a method of protecting Iridium feeder links. Instead, we observe that the current coordination provisions of § 25.258(a) of our rules would require ESIM operations in 29.25–29.3 GHz, like those of any other GSO FSS earth stations operating in the band, to engage in coordination with Iridium.[130]

We find that coordination under § 25.258(a) will provide Iridium with sufficient interference protection. For example, ESIMs may seek to protect Iridium feeder link reception by not transmitting in the 29.25–29.3 GHz band when the transmission from the ESIM would pass through the region in space in which an Iridium satellite could be present at an elevation angle of five degrees or higher[131] as viewed from any Iridium feeder link earth station transmitting in the band,[132] and such transmission would exceed the interference protection criteria of the Iridium space station feeder link receiver. An ESIM could calculate when this would occur if it was programmed with the location of all of the Iridium feeder link earth stations in the band.[133] More specifically, with this information programmed into an ESIM, along with the information and skills that an ESIM operator already possesses in order to correctly point its antenna (*i.e.,* its own location, the location of the target GSO FSS space station, and the requisite computing ability), the ESIM operator could determine with sufficient precision when to cut off transmissions in order to comply with these interference protection criteria.[134] Moreover, this mechanism responds to a worst-case Iridium protection scenario. In a less than worst case scenario, an ESIM would only need to avoid transmitting in the 29.25–29.3 GHz band when its transmitted signal would exceed the Iridium satellite interference protection criteria at the actual location of any Iridium satellite that is within the region in space described above, which presents more limited circumstances. If the ESIM could calculate the precise locations of the Iridium satellites in real time, rather than simply the region in space where the Iridium satellite could be present, it would only need to avoid transmitting in the band when its antenna beam would pass sufficiently near the specific Iridium satellite location as to interfere with Iridium satellite reception.[135] While this is a more burdensome calculation for the ESIM to perform and requires the transmission of information about the Iridium satellite orbits, it would afford the ESIM more opportunities to transmit in the 29.25–29.3 GHz band than the worst-case approach described above, if the ESIM licensee chose to implement it. While the Commission acknowledges these potential methods for accomplishing coordination as plausible options, the Commission does not specifically endorse either method, and ESIMs operators and Iridium are free to explore other coordination mechanisms.[136] If either ESIM operators or Iridium have concerns that coordination is not proceeding in good faith, or fail to come to an agreement, the matter can be brought to the attention of the Commission.

We recognize that coordination between ESIMs and NGSO space stations is more complex than coordination in static situations. However, as described in the paragraph above, we are of the view that coordination is feasible. In addition, any concerns about aggregate effect for

[126] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Service,* First Report and Order, 11 FCC Rcd 19005, 19024, para. 42 (1996). In designating the 29.25–29.5 GHz bands for feeder links for NGSO MSS systems and GSO FSS uplinks, the Commission adopted specific provisions for licensing and coordination of NGSO MSS feeder links in the 29.25–29.5 GHz band. *See* 47 CFR 25.258 (''Operators of NGSO MSS feeder link earth stations and GSO FSS earth stations in the band 29.25 to 29.5 GHz where both services have a co-primary allocation shall cooperate fully in order to coordinate their systems'').

[127] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Service,* Memorandum Opinion and Order, 16 FCC Rcd. 11436, 11438–39, para. 7 (2001).

[128] Opposition of Iridium Constellation LLC, IBFS File No. SAT–MOD–20120813–00128 (filed Oct. 19, 2013), at 1 (stating that the modification Iridium seeks ''will not require additional bandwidth in the 29.25–29.3 GHz band shared with GSO FSS networks such as Hughes'').

[129] *See Iridium Constellation LLC, Application for Modification of License to Authorize a Second-Generation NGSO MSS Constellation,* 31 FCC Rcd 8675, 8676, para. 3 (''Iridium shares the 29.25–29.3 GHz feeder uplink band on a co-primary basis with geostationary-satellite orbit (GSO) space stations in the fixed-satellite service (FSS).'').

[130] *See also* 47 CFR 25.203(h).

[131] We choose that elevation angle to be five degrees or higher as viewed from any Iridium feeder link earth station transmitting in the band noting that the Iridium feeder link earth stations in the 29.25–29.3 GHz band are authorized to communicate with Iridium space stations only when the Iridium satellites are at an elevation angle of five degrees or more above the local horizontal plane, as viewed from the earth station. *See, e.g. Iridium Satellite LLC,* IBFS File No. SES–MOD–20060907–01680 (granted Mar. 29, 2007).

[132] The region in space in which an Iridium satellite could be present at an elevation angle of five degrees or higher as viewed from a particular Iridium feeder link earth station is a segment of the surface of a sphere, or ''cap,'' at the altitude of the Iridium satellites, which is approximately 780 kilometers. The size of this cap is such that the arc length from the point directly above the Iridium feeder link earth station to the edge of the cap is approximately 2800 kilometers. The interference threshold is calculated assuming a worst-case situation in which the Iridium space station receiving antenna has maximum gain towards the ESIM location.

[133] This information could be programmed into the ESIM software and updated as necessary by the ESIM's Network Control and Monitoring Center (NCMC).

[134] The calculations could take place in two steps. The first step would be to identify the point (point A) at which the direction of an ESIM transmission capable of causing interference intersects a sphere that is centered on the center of the Earth and having a radius equal to the radius of the Earth plus the altitude of the Iridium satellites. The second step would be to determine whether the distance from point A to the point on the same sphere (point B) that is directly over the Iridium feeder link earth station is less than approximately 2800 kilometers in arc length. As mentioned *supra,* 2800 kilometers is the arc length from point B to the boundary on the sphere beyond which the Iridium satellites are below five degrees elevation angle as viewed from the feeder link earth station. If the distance between points A and B is less than 2800 kilometers, the ESIM emission could interfere with reception of the Iridium feeder uplink by an Iridium satellite located at point A.

[135] The ESIM operator's Network Control and Monitoring Center (NCMC) could periodically transmit the ephemeris data of the Iridium satellites to the ESIMs in the network to enable each ESIM to accurately calculate the locations of the Iridium satellites. Alternatively, it could transmit other data describing the Iridium satellite orbits that would reduce the computational load on the ESIMs.

[136] Iridium recommends that the Commission require ESIMs to comply with this specific coordination mechanism. Iridium Sept. 12 *Ex Parte* Letters at 2; Sept. 18 Javed *Ex Parte* Letter at 2, and Iridium Sept. 20 Bender *Ex Parte* Letter at 2. While Inmarsat, ViaSat and SES, urge the Commission to maintain flexibility with respect to possible coordination mechanisms. ESIM Operators Sept. 18 Joint *Ex Parte* Letter at 3. *See also* ViaSat Sept. 21 *Ex Parte* Letter.

interference generated by large numbers of ESIMs can be addressed during coordination.[137] Finally, we encourage the parties to act in good faith, consistent with our overall goal of promoting efficient use of spectrum.

Iridium asserts that ''coordination with blanket-licensed fixed terminals has hardly been common, has been challenging to the limited extent that it has occurred, becomes increasingly complex with each additional system, and would make sharing with ESIMs even more difficult.'' [138] However, the Commission has already granted blanket licenses for over five million earth stations to operate in the 29.25–29.3 GHz band, each of which was required, pursuant to § 25.258 of our rules, to coordinate with Iridium.[139] These earth stations are not individually licensed and can be ubiquitously deployed. We are not persuaded that the relatively small increase in total number of earth stations licensed in the band that we expect will result from authorizing ESIM operations will lead to a significant increase in the use of the 29.25–29.3 GHz band, or will make coordination exceedingly difficult.[140] Moreover, while interference into the Iridium feeder link receivers depends in part upon the number of simultaneously transmitting earth stations in the band, this number is determined primarily by the number of uplink spot beams on each GSO FSS satellite, not by the number of authorized earth stations. Thus, we will permit ESIMs to operate within the FSS in the 29.25–29.3 GHz band on a co-primary basis, and without protection zones for MSS feeder link operations.[141]

With respect to the conditions for authorizing operations in this band, SES Americom and its affiliate O3b, ViaSat and Inmarsat ''recommend that the Commission adopt a policy statement acknowledging that it can license ESIM operations . . . where an ESIM applicant demonstrates that its operations will not have a significant impact on Iridium's licensed and actual feeder link operations.'' [142] We decline to adopt such an approach, as the coordination requirement that currently applies to the operation of fixed earth stations is also applicable to ESIM operations. Therefore, as provided above, ESIM operations in 29.25–29.3 GHz will be subject to coordination with Iridium, under § 25.258(a) of our rules, just like those of any other GSO FSS earth stations operating in the band.[143] Because GSO FSS uplinks are co-primary with NGSO MSS feeder link uplinks in the 29.25–29.3 GHz band, we expect both Iridium and the licensees of ESIM operations to coordinate with each other in good faith.

ESIMs in the 28.35–28.6 GHz Band. In the *NPRM,* the Commission also asked for comment on any possible effects that these proposed rules may have on existing or future services in adjacent frequency bands, such as the UMFUS operations in the 27.5–28.35 GHz bands.[144] CTIA asserts that the Commission needs to ensure that adjacent terrestrial systems are protected from interference and that we confirm that ESIM out of band emission limits are governed by § 25.202(f).[145] The Global Mobile Suppliers Association (GSA) presented an analyses of interference caused by ESIM transmissions in the 28.35–28.6 GHz band into mobile service (MS) receivers operating below 28.35 GHz. GSA analyzed potential interference from ESIMs into MS receivers for all three types of ESIMs (VMES, ESV, and ESAA) for scenarios in which the ESIM is stationary and in motion, at various separation distances.[146] GSA acknowledged that some of its assumptions result in worst-case interference scenarios.[147] GSA computed both the interference-to-noise ratio at the MS receivers and the combined frequency dependent rejection required by the combined ESIM transmitters and MS receivers to mitigate the interference. GSA states its calculations show that adjacent band interference above the limits it deems acceptable would occur in many of the scenarios it analyzed. In a later submission, GSA questioned the modeling used in the ViaSat analysis.[148]

ViaSat characterized GSA's analysis as ''a static analysis that was based on unrealistic worst-case assumptions and modeling'' and claimed that it would be preferable to rely on ''a statistical approach including Monte Carlo simulations and dynamic movement of stations, both 5G and ESIM, as well as realistic emission mask data for the ESIM.'' [149] According to ViaSat's analysis, ''an earth station in motion (ESIM) operating at the lower end of the 28.35–28.6 GHz band with emissions complying with the FCC's 25.202(f) out-of-band emissions (OOBE) mask does not cause unacceptable interference to 5G systems operating at the upper edge of the adjacent 27.5–28.35 GHz band.'' ViaSat further states that ''GSA's reliance on a deterministic method, rather than dynamic scenarios, is contrary to the approach supported by its own members.'' [150]

We do not express a view here about the relative merits of a deterministic and a dynamic approach. However, as noted above, the Commission has already blanket-licensed over five million fixed earth stations in the 28.35–28.6 GHz band, which can be ubiquitously deployed at unspecified locations anywhere within the United States. ESIMs in this band, like these existing fixed earth stations will be subject to the same out-of-band emission limits in § 25.202(f) of our rules.[151] Despite the large number of operating fixed earth stations, no commenter has challenged the adequacy of these OOBE limits to protect mobile services from interference from fixed earth stations. The number of ESIMs we expect to be deployed in the 28.35–28.6 GHz band is a smaller than the number of consumer earth stations with fixed antennas. Moreover, as noted above, a single ESIM will be transmitting to a satellite receive beam in the same frequency band and

[137] With respect to long term interference, only one ESIM will be transmitting to a satellite receive beam in the same frequency band and polarization at any given time. With respect to short term interference, no ''time aggregation'' occurs if no ESIM is allowed to ever exceed the acceptable interference level associated with small percentages of time. *See also* ViaSat Aug. 29 *Ex Parte* Letter.

[138] Iridium Sept. 25, 2017 *Ex Parte* Letter at 2.

[139] *See, e.g.,* HNS License Sub, LLC, *Satellite Policy Branch Information: Action Taken,* Public Notice, Report No. SAT–00905 (rel. Feb. 28, 2007) (IBFS File No. SES–LIC–20061226–02232).

[140] Compared to the small consumer earth stations with fixed antennas sold for satellite broadband access by companies such as Hughes Network Systems and ViaSat, ESIMs are several times more expensive, because they need a tracking antenna, and are therefore unlikely to be deployed in quantities remotely approaching the quantities in which those consumer earth stations have been and will continue to be deployed.

[141] Iridium also questions whether ESIMs should be recognized as an application of the FSS in the 29.25–29.3 GHz band. Iridium Sept. 12 *Ex Parte* Letter at 3 and Iridium Sept. 12 Bender *Ex Parte* Letter at 3. ESIMs are currently operating in several frequency bands where they have been treated as applications of the FSS (see NG55, NG180, NG 181) and have been able to do so maintaining the same interference environment created by the operation of fixed earth stations. Operation of ESIMs in the band 29.25–29.3 GHz is not any different than the operation in these other frequency bands.

[142] SES, O3b, Inmarsat, ViaSat *Ex Parte* Letter (filed Apr. 3, 2018).

[143] *See also* 47 CFR 25.203(h).

[144] *NPRM,* 32 FCC Rcd at 4254, para 55.

[145] CTIA Reply Comments at 2 and 4.

[146] GSA Reply Comments at 2.

[147] GSA Reply Comments at 4.

[148] Letter from Reza Arefi, Chair, GSA Spectrum Group for North American Region, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed June 11, 1018) (GSA June 11 *Ex Parte* Letter).

[149] ViaSat Mar. 26 *Ex Parte* Letter.

[150] *Id.* at 2. In a later submission, ViaSat addresses *GSA's June 11 Ex Parte Letter. See* Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 29, 2018) (ViaSat Aug. 29 GSA *Ex Parte* Letter).

[151] 47 CFR 25.202(f).

polarization at any given time and therefore the number of interference sources that might cause aggregation is also limited by this fact. GSA has not made any concrete proposals for out-of-band emission limits specific to ESIMs. Nor did the Commission propose such limits. We therefore decline to adopt any out-of-band emission limits that would be specifically applicable to ESIMs at this time. ESIMs must comply with the out-of-band emission limits specified in § 25.202(f).

18.6–18.8 GHz Bands. The National Academy of Sciences, through its Committee on Radio Frequencies (CORF), expresses concern that ESIMs operating in the 18.6–18.8 GHz band could cause harmful interference to earth exploration satellite service (EESS) systems operating around 18.7 GHz.[152] CORF suggests that ESIMs might cause interference to EESS satellite receivers by transmitting upward toward EESS satellites in that range.[153] CORF also suggests that the introduction of ESIMs could lead to increased use of the 18.6–18.8 GHz band by FSS networks for downlink transmissions to ESIM terminals, potentially resulting in increased reflections of satellite signals off the surface of the Earth and into EESS satellite receivers.[154] In its reply comments, Boeing states that it reached out to CORF representatives to discuss possible misunderstandings regarding the nature of operations in the 18.6–18.8 GHz band.[155] Specifically, Boeing notes that given the fact that the 18.3–18.8 GHz band is authorized for downlink transmissions from FSS satellites, there is no potential for ESIMs to transmit in an upward direction in this frequency segment.[156] Second, Boeing pointed out, that the introduction of ESIMs in the 18.3–18.8 GHz band would not result in additional satellite downlink transmissions in this spectrum, it would just increase the number of fixed and mobile earth stations that would receive those signals on Earth.[157] Further, as Boeing states, ''[t]he total number of FSS networks operating in the Ka-band using geostationary satellites has been governed primarily by the number of space stations that can successfully operate in a two-degree spacing environment, not any limits on end user demand for such capacity.'' [158] We agree and will continue to be mindful of the need to protect the interests of the passive scientific users of the radio spectrum, including users of the Radio Astronomy Service (RAS) and EESS bands, as observed by CORF.[159]

CORF further suggests that the Commission should clarify the proper meaning of ''radio line of sight.'' [160] Specifically, CORF states it is particularly important to note that in general, the radio and geometric horizons are different because of atmospheric refraction.[161] Thus, for an atmosphere having a standard refractivity gradient, the effective radius of Earth is about four-thirds that of the actual radius, which corresponds to approximately 8,500 km.[162] This increases the radio horizon by about 15 percent compared to the geometric horizon.[163] Although we do not incorporate a definition of ''radio line of sight'' in the rules we adopt here, we note that CORF's interpretation of radio line of sight is widely accepted.

Stratospheric Platforms. The Elefante Group asks the Commission to ensure that its stratospheric platforms would be considered ESAA to enable GSO satellite communications with its platforms.[164] We note that our ESAA definition does not set an upper limit on the altitude of the aircraft communicating with a geostationary satellite. In addition, setting such a limit was not proposed or addressed in this proceeding. We therefore decline to generally state that stratospheric platforms are included in the definition of ESAA. Proposals for using FSS frequencies for communications between such platforms and geostationary satellites will be examined taking into consideration their specific characteristics.

Having addressed the concerns raised in the record regarding the expansion of ESIMs to the conventional Ka-band frequency bands, we find it in the public interest to adopt rule changes as proposed in the *ESIM NPRM.* Accordingly, we combine footnote NG55 with the relevant portion of NG52 into NG527A, and state: ''In the bands 11.7–12.2 GHz (space-to-Earth), 14.0–14.5 GHz (Earth-to-space), 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary satellites in the fixed-satellite service on a primary basis.'' We also amend § 25.202(a)(8), (a)(10), and (a)(11) consistent with these changes to reflect all frequency bands.[165]

ESIMs Application Requirements

In the *ESIMs NPRM,* the Commission proposed significant reorganization of the part 25 rules governing all types of ESIMs. As explained in the *ESIMs NPRM,* application requirements for FSS earth station authorizations at fixed and temporary-fixed locations are in § 25.115. However, the earth station license application requirements for ESVs, VMESs, and ESAAs are contained in paragraph (b) of §§ 25.221, 25.222, 25.226, and 25.227. The Commission proposed to move the ESIM application requirements into § 25.115 for better integration of the rules, and we adopt this proposal. Specifically, the application requirements for a particular frequency band for all types of ESIM platforms will be contained in paragraphs (l) (for C-band), (m) (for Ku-band), and (n) (for Ka-band) of Section 25.115. This restructuring is globally supported by the commenters.[166]

Overview of Earth Station Licensing Rules. As explained in detail in the *ESIMs NPRM,* the part 25 licensing rules for FSS earth stations transmitting digital emissions to GSO FSS space stations provide two main options for obtaining a license for an earth station at a fixed location. The first option for obtaining such a license is to demonstrate compliance (in one of two ways) with default limits on emissions in directions other than toward the target satellite, which are referred to as off-axis EIRP density limits.[167] These limits were developed to implement the Commission's GSO FSS space station two-degree orbital spacing policy. They ensure earth station compatibility with networks using adjacent satellites in a two-degree orbital spacing environment by controlling the level of emissions from an earth station that can be transmitted toward adjacent satellite orbital locations. Under this option, there are, as indicated, two ways to show compliance. One alternative is to demonstrate that the earth station antenna gain pattern comports with the off-axis gain limits in § 25.209, and that the antenna input power density comports with limits in § 25.212. The

[152] CORF Comments at 6–10.

[153] CORF Comments at 9.

[154] *Id. See also* Boeing Reply Comments at 5.

[155] Boeing Reply Comments at 5–6.

[156] *Id.* at 5.

[157] *Id.* at 5–6.

[158] *Id.* at 6.

[159] CORF Comments at 1.

[160] CORF Comments at 5.

[161] *Id.*

[162] *Id.* at 5–6.

[163] *Id.* at 6.

[164] Elefante Group Comments at 3. We also decline Elefante Group's request that the term ''aircraft'' as used within the definition of ESAA be interpreted broadly to include stratospheric platforms. *Id.* at 5.

[165] *See* Appendix B.

[166] AC BidCo Comments at 1; Boeing Comments at 3; Inmarsat Comments at 2; Joint Commenters Comments at 1; ViaSat Comments at 4–5.

[167] The off-axis EIRP density limits are set forth in 47 CFR 25.218 for the C- and Ku-bands and in 47 CFR 25.138 for the Ka-band.

Commission proposed to extend this option to ESIM applications. The other alternative, already available to ESIM applicants, is to demonstrate that the off-axis EIRP density of the earth station emissions comports with the applicable off-axis EIRP density limits in our ESIM rules.[168] The second option to obtain a license is to demonstrate that the operations of the earth stations in the satellite network have been coordinated with operators of networks using adjacent satellites that would be affected by emissions of the earth stations that exceed the default off-axis EIRP density limits, under the coordination requirements of § 25.220.

Commenters support the proposals that both of these licensing mechanisms be available to ESIM operators.[169] Regarding the alternative of certifying compliance with the antenna pattern specifications in § 25.209 and the antenna input power density requirements in § 25.212, in addition to the current option of showing that the § 25.218 off-axis EIRP density limits are met, AC BidCo states that there is consensus in favor of the Commission's plan to give ESIM applicants this flexibility.[170] As explained in more detail below, we adopt the plan to continue to make both options for obtaining a license available for ESIMs and revise our rules to allow ESIM applicants to use both alternatives for showing compliance under the first option.[171] As discussed above,[172] we are eliminating antenna pointing accuracy requirements for ESIMs. Therefore, the showings regarding antenna pointing accuracy in paragraphs (b)(1) of §§ 25.221, 25.222, 25.226, and 25.227 will no longer be required. Similarly, the ESIM application showing required for applicants proposing to meet the 0.2 degree antenna pointing accuracy requirement in paragraphs (b)(1)(iii) of §§ 25.221, 25.222, 25.226, and 25.227 is no longer relevant. Again, because we are eliminating the antenna pointing accuracy requirement, the requirement in the existing ESIM rules that an applicant proposing to operate with a maximum pointing error greater than 0.2 degrees must declare its maximum pointing error and show that at the maximum mispointing, the EIRP density limits are still met, is no longer necessary. Once our new rules go into effect, applicants will have two options to qualify for a license: Either comply with the off-axis EIRP density limits, and provide the information required by §§ 25.115(l)–(n)(1), or coordinate, and provide the information required by §§ 25.115(l)–(n)(2). Additionally, we eliminate the pointing accuracy certification requirements of §§ 25.221(b)(1)(iii), 25.222(b)(1)(iii), 25.226(b)(1)(iii), and 25.227(b)(1)(iii), subparagraphs (A) and (B). We also eliminate the maximum mispointing declaration requirements that were in paragraphs (b)(1)(iv)(A) and the cessation of transmissions upon mispointing demonstration requirements in paragraphs (b)(1)(iv)(B) in §§ 25.221, 25.222, 25.226, and 25.227.

We adopt, without commenter objection, the proposal to retain the requirement to provide the off-axis EIRP density showing required by §§ 25.115(g)(1), and the coordination certifications required by § 25.220(d), for applicants that will not meet the off-axis EIRP density limits. Paragraphs (b)(2), (b)(2)(i) and (b)(2)(ii) of §§ 25.221, 25.222, 25.226, and 25.227 apply to an applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of these sections. Such an applicant will apply under the provisions in subparagraphs (a)(2) of § 25.115(l)–(n), which contain substantially the same requirements for exhibits to its earth station application.

The Commission further proposed to allow ESIM applicants the option of certifying compliance with the antenna pattern requirements of § 25.209 and the antenna input power density requirements of § 25.212, in lieu of the off-axis EIRP density limits in § 25.218.[173] This is not a substantive change, because the off-axis EIRP density limits in § 25.218, and those resulting from the summing of the antenna input power density limits in § 25.212 and the antenna off-axis gain limits in § 25.209 are the same as the off-axis EIRP density limits in the individual ESIM §§ 25.221, 25.222, 25.226, and 25.227.[174] No commenters disagree with this proposal.[175] For example, the Joint Commenters note that giving applicants the option of how to certify off-axis performance provides regulatory flexibility without sacrificing protection from harmful interference.[176]

Paragraphs (b)(2)(iii) and (b)(2)(iv) of §§ 25.221, 25.222, 25.226, and 25.227 require detailed showings that each ESAA transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding the applicable limits. In the rules proposed in the *ESIMs NPRM* in § 25.115(l)–(n)(3)(i), the applicant would have been required to show how the transmitter will detect exceedance of the off-axis EIRP density mask and reduce the power of or shut down one or more transmitters within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off-axis EIRP spectral-densities of the transmitter or transmitters exceed the relevant off-axis EIRP spectral-density limits.

Many commenters argue against the demonstration requirement in our proposal. For example, Inmarsat argues that such demonstration at the application phase that would produce the necessary ''detailed showings'' would be impractical and burdensome.[177] Inmarsat submits that applicants should be able to certify compliance in their applications, just like the requirements of § 25.227.[178] Similarly, the Joint Commenters state they cannot support the proposal, as written, to include a requirement to demonstrate how the cessation requirement will be met.[179] Boeing also states that it concurs with Intelsat and Inmarsat's explanation that it would be appropriate for the Commission to permit ESIMs applicants to certify that their earth station terminals will comply with the Commission's shut down requirements to ensure compliance with the off-axis power spectral density limits, rather than require a ''demonstration'' of such compliance.[180] Such a certification requirement would be consistent with the Commission's existing rules regarding antenna pointing and cessation requirements and therefore should be adopted.[181] Hughes provides suggested text for

[168] These provisions are set forth in paragraphs (b)(1) of §§ 25.221, 25.222, 25.226, and 25.227.

[169] AC BidCo Comments at 3; Joint Commenters Comments at 3; AC BidCo Reply Comments at 2; ViaSat Reply Comments at 4.

[170] AC BidCo Reply Comments at 4.

[171] The Joint Commenters support the proposal to permit applicants to demonstrate technical compliance by either certifying compliance with (1) the off-axis antenna gain limits in § 25.209 and the antenna input power density limits in § 25.212 or (2) the off-axis EIRP density limits set forth in § 25.218. Joint Commenters at 3. *See also* AC BidCo at 3.

[172] *See* para. 0 *supra.*

[173] *NPRM,* 32 FCC Rcd at 4254, para. 58. For completeness, we note that cross-references in § 25.212 are revised to reflect the changes to §§ 25.138, 25.221, 25.222, 25.226, and 25.227.

[174] In the *2015 Second Report and Order,* the Commission adopted the same definition of θ as described in the preceding paragraph in § 25.209, the off-axis antenna gain limits rule. *2015 Second Report and Order,* 30 FCC Rcd 14713.

[175] *See, e.g.,* AC BidCo Comments at 3; Boeing Comments at 4; Joint Commenter Comments at 3; ViaSat Comments at 8.

[176] Joint Commenter Comments at 3.

[177] Inmarsat Comments at 4.

[178] *Id.*

[179] Joint Commenters at 4.

[180] Boeing Comments at 2.

[181] *Id.*

certification rather than demonstration.[182]

After further consideration, we agree with commenters that a certification is sufficient for the purposes of this application requirement. We have used a certification process elsewhere in our rules and it has proven effective at ensuring that licensees satisfy the technical requirements of our rules.[183] Thus, Sections 25.115(l)–(n)(3)(i) will require all applicants to: ''provide a *certification* that the ESIM system is capable of detecting and automatically ceasing emissions when an individual ESIM transmitter exceeds the relevant off-axis EIRP spectral density limits specified in § 25.218, or the limits provided to the target satellite operator for operation under § 25.220.''

The certification for a C-band ESV system in § 25.221(b)(3)(v) regarding compliance with the power limits in § 25.204(h) is eliminated as no longer necessary. However, we retain a technical and operational requirement to meet the power limits in § 25.204(h) in redesignated § 25.228(h)(7).

As proposed, we note that the requirements that were in paragraphs (b)(5) of §§ 25.226 and 25.227 that any VMES or ESAA applicant filing for a terminal or system and planning to use a contention protocol must include in its application a certification that its contention protocol use will be reasonable is substantially the same as the requirement in § 25.115(i), which we construe as applying to applications for ESIMs.[184] Therefore, we will not duplicate the language from §§ 25.226(b)(5) and 25.227(b)(5) in the ESIM rules brought into § 25.115.

Further, as proposed, we delete the requirements that were in paragraphs (b)(8) of §§ 25.226 and 25.227 that VMES and ESAA applicants must submit a radio frequency hazard analysis determining via calculation, simulation, or field measurement, whether ESAA terminals, or classes of terminals, will produce power densities that will exceed the Commission's radio frequency exposure criteria as duplicative of § 1.1307(b) of the Commission's rules.[185] Similarly, we delete paragraphs (b)(7) of §§ 25.221 and 25.222 and § 25.226(b)(9) as duplicative of 25.115(k)(1), which we construe as applicable to ESIM applications.[186]

Paragraphs (b)(7) of §§ 25.226 and 25.227 require that any VMES or ESAA applicant must include in its application a certification that it will comply with the requirements of paragraphs (a)(6) of those sections, and paragraphs (a)(9), (a)(10), and (a)(11) of § 25.227. The Commission invited comment as to whether the certification requirement serves a useful purpose, or whether the Commission should eliminate it, because Commission licensees are required to comply with all applicable Commission rules. AC BidCo comments that ''eliminating this certification requirement will have no effect on the substantive technical and operational standards that an ESIM operator must meet.'' [187] Because licensees will be required to comply with these provisions even without the certification requirement, we agree, and will no longer require such a certification.

We proposed to remove § 25.226(b)(8), which states, in part, that all VMES applicants must demonstrate that their VMES terminals are capable of automatically ceasing transmissions upon the loss of synchronization or within 5 seconds upon loss of reception of the satellite downlink signal, whichever is the shorter timeframe. This is redundant with § 25.271(g), which applies by its terms to all transmitting earth stations. It is not necessary to duplicate the provisions in § 25.271(g) in a rule intended specifically for ESIMs. Additionally, the requirement for radiation hazard mitigation that had been included in § 25.226(b)(8) is incorporated into § 25.228(d), as explained above.

Finally, as proposed, we retain the requirements in paragraphs (b)(4) of §§ 25.221, 25.222, 25.222, 25.226, and 25.227, in paragraphs (b)(5) of §§ 25.221 and 25.222 and (b)(6) of §§ 25.226 and 25.227, and in paragraphs (b)(6) of §§ 25.221 and 25.222 and (b)(8) of §§ 25.226 and 25.227, and move those requirements into paragraphs (l)–(n) of § 25.115.[188] Inmarsat supports this proposal as promoting uniformity and efficiency.[189]

Merging §§ 25.130 and 25.131 Into § 25.115

We adopt the Commission's proposals to move the requirements in § 25.130 into § 25.115(a)(5)–(10).[190] We note that there is a difference between what the Commission proposed in the *ESIMs NPRM* and the version that we adopt in this Report and Order because § 25.130 was updated by the *Spectrum Frontiers Second Report and Order*.[191] The changes to § 25.130(b) are brought into § 25.115(a)(6)(i)–(iv), and the Note to paragraph (g) is now incorporated as a Note to (a)(10). Further, the Note is revised to eliminate cross-references to the individual ESIM §§ 25.221, 25.222, 25.226, and 25.227, and is revised to cross-reference the appropriate paragraphs of § 25.115.

Further, the last sentence of § 25.130(a) previously stated that ''applicants that are not required to submit applications on Form 312EZ'' must submit the information in subparagraphs (1)–(5) of § 25.130(a) as an attachment to their applications. The use of Form 312EZ is not mandatory, but rather, use is an option available to applicants under some circumstances. Therefore, as proposed, we change the word ''required'' to ''permitted''. We reserve § 25.130. Cross-references to this section are redirected to the appropriate paragraphs in § 25.115.

Similarly, we move all requirements regarding receive-only earth stations, with minor revisions, from § 25.131 into § 25.115(b).[192] We reserve § 25.131, and redirect any cross-references to this section to the appropriate paragraphs in § 25.115.

Other Miscellaneous Changes to § 25.115

We adopt the proposals to reorganize and remove sections that are redundant or better included elsewhere in the reorganized sections.[193] Specifically, we incorporate the language regarding instructions for electronically filing from § 25.115(a)(4), into § 25.115(a)(1). We revise the cross-references in § 25.115(k)(1) to §§ 25.221, 25.226, and 25.227 to refer instead to the proposed paragraphs (l)–(n) of § 25.115, consistent with the unifying of the application requirements into § 25.115. Similarly, we adopt non-substantive changes to § 25.115(k)(2). The proposed changes to 25.115(c)(1) discussed in the *ESIMs NPRM* were previously adopted in the *NGSO FSS Report and Order*.[194]

[182] Hughes Comments at 4–5.

[183] S*ee e.g.,* 47 CFR 25.140(a) (requiring GSO FSS space station applications to contain certifications of compliance with certain technical requirements, without submission of any backup evidence or demonstrations).

[184] *NPRM,* 32 FCC Rcd at 4356, para. 65.

[185] 47 CFR 1.1307(b).

[186] *NPRM,* 32 FCC Rcd at 4256, para. 66.

[187] AC BidCo Comments at 4.

[188] *NPRM,* 32 FCC Rcd at 4256–57, para. 69.

[189] Inmarsat Comments at 4.

[190] A list of the existing paragraphs in § 25.130 and the corresponding proposed paragraphs in § 25.115 appears in Table 1 of Appendix C.

[191] *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services et al.,* Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988 (2017).

[192] A list of the existing paragraphs in § 25.131 and the corresponding proposed paragraphs in § 25.115 appears in Table 2 of Appendix C.

[193] *NPRM,* 32 FCC Rcd at 4257, para. 72.

[194] *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters,* Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809,

Changes Required in Additional Sections of the Commission's Rules: §§ 25.129, 25.133, 25.140, 25.202, 25.204, 25.209, and 25.258 and Notes to the Table of Frequency Allocations

The Commission proposed several additional changes in other sections of part 25 to harmonize the various rule sections involving ESIMs. We are updating cross-references to sections which are being eliminated or reorganized accordingly. Specifically, we eliminate references to §§ 25.221, 25.222, 25.226 and 25.227 in §§ 25.202(a)(8) and 25.140(d)(1). Section 25.140(d)(1) also has an updated reference to § 25.218. Additionally, we update the cross-reference to § 25.138(a) in § 25.140(a)(3)(iii) to point to § 25.218(i), which will contain the off-axis EIRP density limits contained in § 25.138(a). Similarly, we revise the cross-reference to § 25.138(a) in § 25.258(b) regarding operation of ubiquitously deployed GSO FSS earth stations in the 29.25–29.5 GHz frequency band to point to § 25.218(i). We are also eliminating cross-references to §§ 25.221, 25.222, 25.226, and 25.227 in §§ 25.115(g)(1)(iv) and (vii). Further, we are eliminating cross-references to § 25.138, *e.g.* from §§ 25.115(c)(3)(i)(B), (c)(3)(ii), and 25.132(d). In § 25.133(d), the reference to § 25.131 is updated to reflect the requirement being reorganized into § 25.115(b).

Because § 25.138 is being removed and reserved, we remove the reference to it in § 25.129(c).[195] For the same reasons, we remove references to § 25.221 in § 25.140(a)(3)(i), and to §§ 25.222, 25.226, and 25.227 in § 25.140(a)(3)(ii).[196] For completeness, we also note that we eliminate similar obsolete cross-references in § 25.220(a).

We revise the cross-references to §§ 25.130 and 25.131 in § 25.209(c)(1) to reflect the move of the particular requirements to §§ 25.115(b)(2) and (b)(4). Similarly, we revise § 25.209(f) to eliminate the reference to §§ 25.138, 25.221, 25.222, 25.226, and 25.227, and to refer instead to § 25.218, as well as other clarifying changes. These changes are necessary to reflect the changes to requirements for demonstrations for a non-conforming antenna. We also consolidate the requirements in paragraphs (i)–(k) of § 25.204 into § 25.228(j)(2).[197]

In addition to moving the ESIM-related sentence of footnote NG52 of the Table of Frequency Allocations into NG527A [198] that language in footnote NG52 is also revised to refer to ESIMs rather than ESVs, VMESs, and ESAAs to be consistent with the terminology adopted in this Report and Order.[199] Finally, footnote US133 of the Table of Frequency Allocation contained cross-references to sub-paragraphs of §§ 25.226 and 25.227 that are updated to point to the appropriate sub-paragraphs of § 25.228.[200]

Procedural Matters

In this document, we have assessed the effects of reducing the application burdens of GSO FSS ESIM applicants, and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

Congressional Review Act. The Commission sent a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Conclusion and Ordering Clauses

It is ordered, pursuant to sections 4(i), 7(a), 303, 308(b), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303, 308(b), 316, that this Report and Order *is adopted*, the policies, rules, and requirements discussed herein *are adopted*, parts 2 and 25 of the Commission's rules *are amended* as set forth in Appendix B, and this Further Notice of Proposed Rulemaking *is adopted*.

It is further ordered that the rules and requirements adopted in the Report and Order *will become effective* October 8, 2019.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, sent a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, sent a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Radio, Table of Frequency Allocations.

47 CFR Part 25

Administrative practice and procedure, Earth stations, Satellites.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.106, the Table of Frequency Allocations, by:
■ a. Revising pages 41, 44, 48, 49, 50, 52, and 55;
■ b. Adding footnotes 5.484B and 5.527A in the list of International Footnotes;
■ c. Revising footnote US133 in the list of United States (US) Footnotes; and
■ d. In the list of non-Federal Government (NG) Footnotes by:
■ i. Revising footnote NG52;
■ ii. Removing footnotes NG55, NG180, and NG181; and
■ iii. Adding footnotes NG457A and NG527A.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Appendix A (2017) (*NGSO FSS Order* or *NGSO FSS FNPRM*).

[195] *See* Appendix B.

[196] *Id.*

[197] A list of the existing paragraphs in § 25.204 and the corresponding proposed paragraphs in § 25.228 appears in Table 6 of Appendix C.

[198] 47 CFR 2.106.

[199] *See* Appendix B—Final Rules.

[200] We also adopt the proposal to add footnotes 5.484B and 5.527A, which relate to ESIM use and were adopted in WRC–15, to the International Table.

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Table of Frequency Allocations		3500-5460 MHz (SHF)			Page 41
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433	3500-3550 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3500-3550 Radiolocation	Private Land Mobile (90)
			3550-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3550-3600 FIXED MOBILE except aeronautical mobile US105 US433	Citizens Broadband (96)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile		3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433	US105 US107 US245 US433	3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433	Satellite Communications (25) Citizens Broadband (96)
		5.435	3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG457A	Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE 5.440A			4400-4940 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A				4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.440A 5.442 Radio astronomy 5.149 5.339 5.443			US113 US245 US342	4800-4940 US113 US342	
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4940-4990 5.339 US342 US385 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385	Public Safety Land Mobile (90Y)
			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		

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5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation 5.150	5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur 5.150	ISM Equipment (18) Private Land Mobile (90) Personal Radio (95) Amateur Radio (97)
5925-6700 FIXED 5.457 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE 5.457C 5.149 5.440 5.458			5925-6425	5925-6425 FIXED FIXED-SATELLITE (Earth-to-space) NG457A	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
			6425-6525 5.440 5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	RF Devices (15) Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
			6525-6700 5.458 US342	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.458 US342	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE 5.458 5.458A 5.458B 5.458C			6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B	
				6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B	RF Devices (15) Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
				7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B	RF Devices (15) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
7075-7145 FIXED MOBILE 5.458 5.459			5.458	7075-7125 FIXED NG118 MOBILE NG171 5.458	
			7125-7145 FIXED 5.458 G116	7125-7145 5.458	RF Devices (15) Page 44

9.9-10 RADIOLOCATION Fixed 5.477 5.478 5.479			9.9-10 RADIOLOCATION 5.479	9.9-10 Radiolocation 5.479	
10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION Amateur 5.479 5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.5 RADIOLOCATION US108 G32	10-10.45 Amateur Radiolocation US108 5.479 US128 NG50	Private Land Mobile (90) Amateur Radio (97)
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481			5.479 US128	10.45-10.5 Amateur Amateur-satellite Radiolocation US108 US128 NG50	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482 5.482A			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US130 US131 US482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US482 SPACE RESEARCH (passive) US130 US131	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US131 US246		
10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A 5.484B (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A 5.484B MOBILE except aeronautical mobile		10.7-11.7 US131 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US131 US211 NG52	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487 5.487A	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.488 Mobile except aeronautical mobile 5.485 12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.488 5.485 5.489	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487 5.487A	11.7-12.2	11.7-12.2 FIXED-SATELLITE (space-to-Earth) 5.485 5.488 NG143 NG527A	Satellite Communications (25)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.484B MOBILE except aeronautical mobile BROADCASTING	12.2-12.75	12.2-12.7 FIXED BROADCASTING-SATELLITE	Satellite Communications (25) Fixed Microwave (101)
	5.487A 5.488 5.490	5.484A 5.487		5.487A 5.488 5.490	
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B (Earth-to-space)	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493		12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
5.494 5.495 5.496					
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG52 NG57 MOBILE US251 NG53	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A 5.499			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIONAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)
13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B			13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.501B	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research 5.499 5.500 5.501 5.502 5.503			13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 US356 US357	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Standard frequency and time signal-satellite (Earth-to-space) Space research Radiolocation US356 US357	Satellite Communications (25) Private Land Mobile (90)
14-14.25 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504B 5.504C 5.506A Space research			14-14.2 Space research US133	14-14.2 FIXED-SATELLITE (Earth-to-space) NG527A Mobile-satellite (Earth-to-space) Space research US133	Satellite Communications (25)

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*	5.504A 5.505			14.2-14.4	14.2-14.47 FIXED-SATELLITE (Earth-to-space) NG527A Mobile-satellite (Earth-to-space)	
	14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B					
*	RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.508A Space research					
*	5.504A 5.505 5.508					
*	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radionavigation-satellite	14.3-14.4 FIXED-SATELLITE (Earth-to-space) 5.457A 5.484A 5.484B 5.506 5.506B Mobile-satellite (Earth-to-space) 5.506A Radionavigation-satellite	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.484A 5.484B 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radionavigation-satellite			
	5.504A	5.504A	5.504A			
	14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Space research (space-to-Earth) 5.504A			14.4-14.47 Fixed Mobile		
	14.47-14.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radio astronomy 5.149 5.504A			14.47-14.5 Fixed Mobile US113 US133 US342	14.47-14.5 FIXED-SATELLITE (Earth-to-space) NG527A Mobile-satellite (Earth-to-space) US113 US133 US342	
	14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) 5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-14.8	
				14.7145-14.8 MOBILE Fixed Space research		
	14.8-15.35 FIXED MOBILE Space research			14.8-15.1365 MOBILE SPACE RESEARCH Fixed US310	14.8-15.1365 US310	
				15.1365-15.35 FIXED SPACE RESEARCH Mobile 5.339 US211	15.1365-15.35 5.339 US211	
	5.339					
	15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.511			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		

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	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE 5.519		17.8-18.3 FIXED-SATELLITE (space-to-Earth) US334 G117 US519	17.8-18.3 FIXED Fixed-satellite (space-to-Earth) US334 US519	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			18.3-18.6 FIXED-SATELLITE (space-to-Earth) US334 G117 US139	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164 NG527A US139 US334	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE					
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 US334 G117 SPACE RESEARCH (passive) US139 US254	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 NG527A SPACE RESEARCH (passive) US139 US254 US334	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) US334 G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US139 US334	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A Mobile-satellite (space-to-Earth) 5.524		19.7-20.2 FIXED-SATELLITE (space-to-Earth) NG527A MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)
20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528			US139	5.525 5.526 5.527 5.528 5.529 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	

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Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
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27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE 5.538 5.540			27.5-30	27.5-28.35 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30) Fixed Microwave (101)
28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540				28.35-29.1 FIXED-SATELLITE (Earth-to-space) NG165 NG527A NG62	Satellite Communications (25)
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540				29.1-29.25 FIXED FIXED-SATELLITE (Earth-to-space) NG166 MOBILE	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
				29.25-29.5 FIXED-SATELLITE (Earth-to-space) NG527A NG535A NG62	Satellite Communications (25)
29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.525 5.526 5.527 5.529 5.540	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542		29.5-30 FIXED-SATELLITE (Earth-to-space) NG527A MOBILE-SATELLITE (Earth-to-space) 5.525 5.526 5.527 5.529 5.543	
29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543 5.525 5.526 5.527 5.538 5.540 5.542					
30-31 FIXED-SATELLITE (Earth-to-space) 5.338A MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) 5.542			30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) G117	30-31 Standard frequency and time signal-satellite (space-to-Earth)	

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International Footnotes

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5.484B Resolution 155 (WRC–15) shall apply. (WRC–15)

* * * * *

5.527A The operation of earth stations in motion communicating with the FSS is subject to Resolution 156 (WRC–15). (WRC–15)

* * * * *

United States (US) Footnotes

* * * * *

US133 In the bands 14–14.2 GHz and 14.47–14.5 GHz, the following provisions shall apply to the operations of Earth Stations Aboard Aircraft (ESAA):

(a) In the band 14–14.2 GHz, ESAA licensees proposing to operate within radio line-of-sight of the coordinates specified in 47 CFR 25.228(j)(1) are subject to prior coordination with NTIA in order to minimize harmful interference to the ground terminals of NASA's Tracking and Data Relay Satellite System (TDRSS).

(b) In the band 14.47–14.5 GHz, operations within radio line-of-sight of the radio astronomy stations specified in 47 CFR 25.228(j)(3) are subject to coordination with the National Science Foundation in accordance with the requirements set forth in that rule section.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG52 Except as provided for by NG527A, use of the bands 10.7–11.7 GHz (space-to-Earth) and 12.75–13.25 GHz (Earth-to-space) by geostationary satellites in the fixed-satellite service shall be limited to international systems, *i.e.,* other than domestic systems.

* * * * *

NG457A Earth stations on vessels (ESVs), as regulated under 47 CFR part 25, are an application of the fixed-satellite service and the following provisions shall apply:

(a) In the band 3700–4200 MHz (space-to-Earth), ESVs may be authorized to communicate with geostationary satellites and, while docked, may be coordinated for up to 180 days, renewable. ESVs in motion are subject to the condition that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed service.

(b) In the band 5925–6425 MHz (Earth-to-space), ESVs may be authorized to communicate with geostationary satellites on a primary basis.

* * * * *

NG527A Earth Stations in Motion (ESIMs), as regulated under 47 CFR part 25, are an application of the fixed-satellite service (FSS) and the following provisions shall apply:

(a) In the bands 10.95–11.2 GHz (space-to-Earth) and 11.45–11.7 GHz (space-to-Earth), ESIMs may be authorized to communicate with geostationary satellites, subject to the condition that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed service.

(b) In the bands 11.7–12.2 GHz (space-to-Earth), 14.0–14.5 GHz (Earth-to-space), 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary satellites on a primary basis.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Amend § 25.103 by:

■ a. Revising the definition of ''Blanket license'';

■ b. Removing the definition of ''Earth Stations Aboard Aircraft (ESAA)'' and adding in its place a definition for ''Earth Station Aboard Aircraft (ESAA)'';

■ b. Adding definitions in alphabetical order for ''Earth Station in Motion (ESIM)'' and ''Network Control and Monitoring Center''; and

■ c. Revising the definitions of ''Routine processing or licensing'', ''Two-degree compliant space station'', and ''Vehicle-Mounted Earth Station (VMES)''.

The revisions and additions read as follows:

§ 25.103 Definitions.

* * * * *

Blanket license. A license for:

(1) Multiple earth stations in the FSS or MSS, or for SDARS terrestrial repeaters, that may be operated anywhere within a geographic area specified in the license; or

(2) For multiple space stations in non-geostationary-orbit.

* * * * *

Earth Station Aboard Aircraft (ESAA). An earth station operating aboard an aircraft that receives from and transmits to geostationary-orbit Fixed-Satellite Service space stations.

* * * * *

Earth Station in Motion (ESIM). A term that collectively designates ESV, VMES and ESAA earth stations, as defined in this section.

* * * * *

Network Control and Monitoring Center (NCMC). An NCMC, as used in Part 25, is a facility that has the capability to remotely control earth stations operating as part of a satellite network or system.

* * * * *

Routine processing or licensing. Expedited processing of unopposed applications for earth stations in the FSS communicating with GSO space stations that satisfy the criteria in § 25.211(d), § 25.212(c), § 25.212(d), § 25.212(e), § 25.212(f), § 25.218, or § 25.223(b), include all required information, are consistent with all Commission rules, and do not raise any policy issues. Some, but not all, routine earth station applications are eligible for an autogrant procedure under § 25.115(a)(3).

* * * * *

Two-degree-compliant space station. A GSO FSS space station operating in the conventional or extended C-bands, the conventional or extended Ku-bands, or the conventional Ka-band within the limits on downlink EIRP density or PFD specified in § 25.140(a)(3) and communicating only with earth stations operating in conformance with routine uplink parameters specified in § 25.211(d), § 25.212(c), (d), (e), or (f), or § 25.218.

Vehicle-Mounted Earth Station (VMES). An earth station, operating from a motorized vehicle that travels primarily on land, that receives from and transmits to geostationary orbit Fixed-Satellite Service space stations and operates within the United States.

■ 5. Amend § 25.115 by:

■ a. Revising paragraphs (a)(1) and (a)(2)(iii);

■ b. Removing and reserving paragraph (a)(4);

■ c. Adding paragraphs (a)(5) through (10);

■ d. Revising paragraphs (b), (c)(1), (c)(2)(i)(A), (c)(3)(i)(B), (c)(3)(ii), (e)(1), (g)(1)(vii), and (k); and

■ e. Adding paragraphs (l), (m), and (n).

The revisions and additions read as follows:

§ 25.115 Applications for earth station authorizations.

(a)(1) *Transmitting earth stations.* Commission authorization must be

obtained for authority to operate a transmitting earth station. Applications for transmitting earth stations must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. Applications must be filed electronically on FCC Form 312, Main Form and Schedule B, and include the information specified in this section, except as set forth in paragraph (a)(2) of this section.

(2) * * *

(iii) The application meets all relevant criteria in § 25.211 or § 25.212 or includes information filed pursuant to paragraph (g)(1) of this section indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant levels specified in § 25.218; and

* * * * *

(5) Applicants that are not permitted to submit applications under paragraph (a)(2) of this section on Form 312EZ, must submit, as an attachment to their application, the following information to be used as an ''informative'' in the public notice issued under § 25.151:

(i) A detailed description of the service to be provided, including frequency bands and satellites to be used. The applicant must identify either the specific satellite(s) with which it plans to operate, or the eastern and western boundaries of the arc it plans to coordinate.

(ii) The diameter or equivalent diameter of the antenna.

(iii) Proposed power and power density levels.

(iv) Identification of any random access technique, if applicable.

(v) Identification of a specific rule or rules for which a waiver is requested.

(6)(i) Applicants for earth stations transmitting in frequency bands shared with equal rights between terrestrial and space services must provide a frequency coordination analysis in accordance with § 25.203(b) and must include any notification or demonstration required by any other relevant provision in § 25.203.

(ii) Applicants for user transceiver units associated with the NVNG MSS must provide the information required by § 25.135.

(iii) Applicants for 1.6/2.4 GHz MSS user transceivers must demonstrate that the transceivers will operate in compliance with relevant requirements in § 25.213.

(iv) Applicants for earth stations licensed in accordance with § 25.136 must demonstrate that the transmitting earth stations will meet the relevant criteria specified in that section, including any showings required under § 25.136(a)(4), (c), (d)(4), and/or (e)(4).

(7) In those cases where an applicant is filing a number of essentially similar applications, showings of a general nature applicable to all of the proposed stations may be submitted in the initial application and incorporated by reference in subsequent applications.

(8) Transmissions of signals or programming to non-U.S. licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. The Commission will maintain public information on the status of any such agreements.

(9) Applicants seeking to operate in a shared government/non-government band must provide the half-power beam width of their proposed earth station antenna, as an attachment to their applications.

(10) With the exception of applications for blanket-licensed earth station networks filed pursuant to § 25.115(c) or § 25.218; applications for conventional Ka-band hub stations filed pursuant to § 25.115(e); applications for NGSO FSS gateway earth stations filed pursuant to § 25.115(f); applications for individually licensed earth stations filed pursuant to § 25.136; applications for ESIMs filed pursuant to § 25.115(l), § 25.115(m), or § 25.115(n); or applications for 29 GHz NGSO MSS feeder-link stations in a complex as defined in § 25.257, parties may apply, either in an initial application or an application for modification of license, for operating authority for multiple transmitting FSS earth stations that are not eligible for blanket or network licensing under another section of this part in the following circumstances:

(i) The antennas would transmit in frequency bands shared with terrestrial services on a co-primary basis and the antennas would be sited within an area bounded by 1 second of latitude and 1 second of longitude.

(ii) The antennas would transmit in frequency bands allocated to FSS on a primary basis and there is no co-primary allocation for terrestrial services, and the antennas would be sited within an area bounded by 10 seconds of latitude and 10 seconds of longitude.

(b) *Receive-only earth stations.* Except as provided in paragraphs (b)(1) and (8) of this section, applications for licenses for receive-only earth stations must be submitted on FCC Form 312, Main Form and Schedule B, accompanied by any required exhibits and the information described in paragraphs (a)(5)(i) through (v) of this section. Such applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(1) Receive-only earth stations in the FSS that operate with U.S.-licensed space stations, or with non-U.S.-licensed space stations that have been duly approved for U.S. market access, may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the Fixed Service in accordance with the procedures of §§ 25.203 and 25.251, subject to the stricture in § 25.209(c).

(2) Licensing or registration of receive-only earth stations with the Commission confers no authority to receive and use signals or programming received from satellites. *See* Section 705 of the Communications Act. 47 U.S.C. 605.

(3) Applications for registration must be accompanied by the coordination exhibit required by § 25.203 and any other required exhibits.

(4) Complete applications for registration will be placed on public notice for 30 days and automatically granted if no objection is submitted to the Commission and served on the applicant. Additional pleadings are authorized in accordance with § 1.45 of this chapter.

(5) The registration of a receive-only earth station results in the listing of an authorized frequency band at the location specified in the registration. Interference protection levels are those agreed to during coordination.

(6) Reception of signals or programming from non-U.S. satellites may be subject to restrictions as a result of international agreements or treaties. The Commission will maintain public information on the status of any such agreements.

(7) Registration term: Registrations for receive-only earth stations governed by this section will be issued for a period of 15 years from the date on which the application was filed. Applications for renewals of registrations must be submitted on FCC Form 312R (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days before the expiration date of the registration.

(8) Applications for modification of license or registration of receive-only earth stations must be made in conformance with §§ 25.117 and 25.118. In addition, registrants are required to notify the Commission when a receive-only earth station is no longer operational or when it has not been

used to provide any service during any 6-month period.

(9)(i) Except as set forth in paragraph (b)(9)(ii) of this section, receive-only earth stations operating with non-U.S. licensed space stations must file an FCC Form 312 requesting a license or modification to operate such station.

(ii) Operators of receive-only earth stations need not apply for a license to receive transmissions from non-U.S.-licensed space stations that have been duly approved for U.S. market access, provided the space station operator and earth station operator comply with all applicable rules in this chapter and with applicable conditions in the Permitted Space Station List or market-access grant.

(c) * * *

(2) * * *

(i) * * *

(A) No more than three geostationary satellites to be accessed;

* * * * *

(3) * * *

(i) * * *

(B) The application includes information filed pursuant to paragraph (g)(1) of this section indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant routine levels specified in § 25.218(i).

(ii) Applications to license networks of earth stations operating in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands under blanket operating authority that do not meet the requirements of § 25.212(e) or § 25.218(i) must comply with the requirements in § 25.220 and must be filed on FCC Form 312 with a Schedule B for each large (5 meters or larger) hub station antenna and each representative type of small antenna (less than 5 meters) operating within the network.

* * * * *

(e)(1) An application for a GSO FSS earth station license in the 17.8–19.4 GHz, 19.6–20.2 GHz, 27.5–29.1 GHz, or 29.25–30 GHz bands not filed on FCC Form 312EZ pursuant to paragraph (a)(2) of this section must be filed on FCC Form 312, Main Form and Schedule B, and must include any information required by paragraphs (a)(5) through (10) or (g) or (j) of this section.

* * * * *

(g) * * *

(1) * * *

(vii) The relevant off-axis EIRP density envelopes in § 25.218 or § 25.223 must be superimposed on plots submitted pursuant to paragraphs (g)(1)(i) through (vi) of this section.

* * * * *

(k)(1) Applicants for FSS earth stations that qualify for routine processing in the conventional or extended C-bands, the conventional or extended Ku-bands, the conventional Ka-band, or the 24.75–25.25 GHz band, including ESV applications filed pursuant to paragraph (m)(1) or (n)(1) of this section, VMES applications filed pursuant to paragraph (m)(1) or (n)(1) of this section, and ESAA applications filed pursuant to paragraph (m)(1) or (n)(1) of this section, may designate the Permitted Space Station List as a point of communication. Once such an application is granted, the earth station operator may communicate with any space station on the Permitted Space Station List, provided that the operation is consistent with the technical parameters and conditions in the earth station license and any limitations placed on the space station authorization or noted in the Permitted Space Station List.

(2) Notwithstanding paragraph (k)(1) of this section, an earth station that would receive signals in the 17.8–20.2 GHz band may not communicate with a space station on the Permitted Space Station List in that band until the space station operator has completed coordination under Footnote US334 to § 2.106 of this chapter.

(l) The requirements of this paragraph apply to applications for ESV operation in the 5925–6425 MHz (Earth-to-space) band with GSO satellites in the Fixed-Satellite Service, in addition to the requirements in paragraphs (a)(1), (5), (6), and (i) of this section:

(1) Applications where any necessary frequency coordination has been satisfactorily completed, and the proposed earth station transmissions comport with the applicable provisions in § 25.212(d) or the applicable off-axis EIRP density limits in § 25.218(d) will be routinely processed. Such applications must include the relevant information specified by paragraph (g) of this section. Applicants for ESIMs operating in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam must also provide the certification required by § 25.212(g) or § 25.218(d)(4), whichever is applicable.

(2) Applications where the proposed earth station transmissions do not comport with the applicable provisions in § 25.212(d) or the applicable off-axis EIRP density limits in § 25.218(d) must include the information specified by paragraph (g)(1) of this section, and are subject to the requirements of § 25.220.

(3) Applications must include the following information:

(i) ESIM applicants that meet the relevant off-axis EIRP density mask must certify that an individual ESIM terminal is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. ESIM applicants that do not meet the relevant off-axis EIRP density mask must provide a detailed showing that an individual ESIM terminal is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. Variable-power ESIM applicants must certify that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off axis EIRP densities of the transmitter or transmitters exceed the relevant off-axis EIRP density limits.

(ii) An exhibit describing the geographic area(s) in which the ESVs will operate.

(iii) The point of contact information referred to in § 25.228(e)(2).

(iv) Applicants for ESVs that will exceed the guidelines in § 1.1310 of this chapter for radio frequency radiation exposure must provide, with their environmental assessment, a plan for mitigation of radiation exposure to the extent required to meet those guidelines.

(m) The requirements of this paragraph apply to applications for ESIM operation in the 14.0–14.5 GHz (Earth-to-space) band with GSO satellites in the Fixed-Satellite Service, in addition to the requirements in paragraphs (a)(1) and (5) and (i) of this section:

(1) Applications where any necessary frequency coordination has been satisfactorily completed, and the proposed earth station transmissions comport with the applicable provisions in § 25.212(c)(2) or the applicable off-axis EIRP density limits in § 25.218(f) will be routinely processed. Such applications must include the relevant information specified by paragraph (g) of this section. Applicants for ESIMs operating in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam must also provide the certification required by § 25.212(g) or § 25.218(f)(4), whichever is applicable.

(2) Applications where the proposed earth station transmissions do not comport with the applicable provisions in § 25.212(c)(2) or the applicable off-axis EIRP density limits in § 25.218(f) must include the information specified

by paragraph (g)(1) of this section, and are subject to the requirements of § 25.220.

(3) Applications must include the following information:

(i) ESIM applicants that meet the relevant off-axis EIRP density mask must certify that an individual ESIM terminal is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. ESIM applicants that do not meet the relevant off-axis EIRP density mask must provide a detailed showing that an individual ESIM terminal is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. Variable-power ESIM applicants must certify that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off axis EIRP densities of the transmitter or transmitters exceed the relevant off-axis EIRP density limits.

(ii) An exhibit describing the geographic area(s) in which the ESIMs will operate.

(iii) The point of contact information referred to in § 25.228(e)(2), (f), or (g)(1) as appropriate.

(iv) Applicants for ESIMs that will exceed the guidelines in § 1.1310 of this chapter for radio frequency radiation exposure must provide, with their environmental assessment, a plan for mitigation of radiation exposure to the extent required to meet those guidelines.

(n) The requirements of this paragraph apply to applications for ESIM operation in the 28.35–28.6 GHz or 29.25–30.0 GHz (Earth-to-space) band with GSO satellites in the Fixed-Satellite Service, in addition to the requirements in paragraphs (a)(1) and (5) and (i) of this section:

(1) Applications where any necessary frequency coordination has been satisfactorily completed, and the proposed earth station transmissions comport with the applicable provisions in § 25.212(e) or the applicable off-axis EIRP density limits in § 25.218(i) will be routinely processed. Such applications must include the relevant information specified by paragraph (g) of this section. Applicants for ESIMs operating in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam must also provide the certification required by § 25.212(g) or § 25.218(i)(5), whichever is applicable.

(2) Applications where the proposed earth station transmissions do not comport with the applicable provisions in § 25.212(e) or the applicable off-axis EIRP density limits in § 25.218(i) must include the information specified by paragraph (g)(1) of this section, and are subject to the requirements of § 25.220.

(3) Applications must include the following information:

(i) ESIM applicants that meet the relevant off-axis EIRP density mask must certify that an individual ESIM terminal is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. ESIM applicants that do not meet the relevant off-axis EIRP density mask must provide a detailed showing that an individual ESIM terminal is self-monitoring and capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESIM transmitter exceeds the relevant off-axis EIRP density limits. Variable-power ESIM applicants must certify that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command to do so from the system's network control and monitoring center, if the aggregate off axis EIRP densities of the transmitter or transmitters exceed the relevant off-axis EIRP density limits.

(ii) An exhibit describing the geographic area(s) in which the ESIMs will operate.

(iii) The point of contact information referred to in § 25.228(e)(2), (f), or (g)(1) as appropriate.

(iv) Applicants for ESIMs that will exceed the guidelines in § 1.1310 of this chapter for radio frequency radiation exposure must provide, with their environmental assessment, a plan for mitigation of radiation exposure to the extent required to meet those guidelines.

■ 6. Amend § 25.129 by revising paragraph (c) to read as follows:

§ 25.129 Equipment authorization for portable earth-station transceivers.

* * * * *

(c) In addition to the information required by §§ 1.1307(b) and 2.1033(c) of this chapter, applicants for certification required by this section must submit any additional equipment test data necessary to demonstrate compliance with pertinent standards for transmitter performance prescribed in §§ 25.202(f), and 25.216, must submit the statements required by § 2.1093(c) of this chapter, and must demonstrate compliance with the labeling requirement in § 25.285(b).

* * * * *

§ 25.130 [Removed and Reserved]

■ 7. Remove and reserve § 25.130.

§ 25.131 [Removed and Reserved]

■ 8. Remove and reserve § 25.131.

■ 9. Amend § 25.132 by revising paragraph (d) introductory text to read as follows:

§ 25.132 Verification of earth station antenna performance.

* * * * *

(d) For each new or modified transmitting antenna over 3 meters in diameter, the following on-site verification measurements must be completed at one frequency on an available transponder in each frequency band of interest and submitted to the Commission.

* * * * *

■ 10. Amend § 25.133 by revising paragraph (d) to read as follows:

§ 25.133 Period of construction; certification of commencement of operation.

* * * * *

(d) Each receiving earth station licensed or registered pursuant to § 25.115(b) must be constructed and placed into service within 6 months after coordination has been completed. Each licensee or registrant must file with the Commission a certification that the facility is completed and operating as provided in paragraph (b) of this section, with the exception of certification of antenna patterns.

§ 25.138 [Removed and Reserved]

■ 11. Remove and reserve § 25.138.

■ 12. Amend § 25.140 by revising paragraphs (a)(3)(i) through (iii) and (d)(1) to read as follows:

§ 25.140 Further requirements for license applications for GSO space station operation in the FSS and the 17/24 GHz BSS.

(a) * * *

(3) * * *

(i) With respect to proposed operation in the conventional or extended C-bands, a certification that downlink EIRP density will not exceed 3 dBW/4kHz for digital transmissions or 8 dBW/4kHz for analog transmissions and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.218 unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six

degrees of the orbital location of the proposed space station and except as provided in paragraph (d) of this section.

(ii) With respect to proposed operation in the conventional or extended Ku-bands, a certification that downlink EIRP density will not exceed 14 dBW/4kHz for digital transmissions or 17 dBW/4kHz for analog transmissions and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.218 unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location of the proposed space station and except as provided in paragraph (d) of this section.

(iii) With respect to proposed operation in the conventional Ka-band, a certification that the proposed space station will not generate power flux-density at the Earth's surface in excess of −118 dBW/m²/MHz and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.218(i) unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location and except as provided in paragraph (d) of this section.

* * * * *

(d) * * *

(1) The letter notification must include the downlink off-axis EIRP density levels or power flux density levels and/or uplink off-axis EIRP density levels, specified per frequency range and space station antenna beam, that exceed the relevant routine limits set forth in paragraphs (a)(3)(i) through (iii) of this section and § 25.218.

* * * * *

■ 13. Amend § 25.202 by revising paragraphs (a)(8), (10), and (11) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a) * * *

(8) The following frequencies are available for use by ESVs:

3700–4200 MHz (space-to-Earth)
5925–6425 MHz (Earth-to-space)
10.95–11.2 GHz (space-to-Earth)
11.45–11.7 GHz (space-to-Earth)
11.7–12.2 GHz (space-to-Earth)
14.0–14.5 GHz (Earth-to-space)
18.3–18.8 GHz (space-to-Earth)
19.7–20.2 GHz (space-to-Earth)
28.35–28.6 GHz (Earth-to-space)
29.25–30.0 GHz (Earth-to-space)

* * * * *

(10) The following frequencies are available for use by Vehicle-Mounted Earth Stations (VMESs):

10.95–11.2 GHz (space-to-Earth)
11.45–11.7 GHz (space-to-Earth)
11.7–12.2 GHz (space-to-Earth)
14.0–14.5 GHz (Earth-to-space)
18.3–18.8 GHz (space-to-Earth)
19.7–20.2 GHz (space-to-Earth)
28.35–28.6 GHz (Earth-to-space)
29.25–30.0 GHz (Earth-to-space)

(11) The following frequencies are available for use by Earth Stations Aboard Aircraft (ESAAs):

10.95–11.2 GHz (space-to-Earth)
11.45–11.7 GHz (space-to-Earth)
11.7–12.2 GHz (space-to-Earth)
14.0–14.5 GHz (Earth-to-space)
18.3–18.8 GHz (space-to-Earth)
19.7–20.2 GHz (space-to-Earth)
28.35–28.6 GHz (Earth-to-space)
29.25–30.0 GHz (Earth-to-space)

* * * * *

■ 14. Amend § 25.204 by revising paragraph (e)(3) and removing paragraphs (h) through (k).

The revision reads as follows:

§ 25.204 Power limits for earth stations.

* * * * *

(e) * * *

(3) FSS earth stations transmitting to geostationary space stations in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands may employ uplink adaptive power control or other methods of fade compensation. For stations employing uplink power control, the values in § 25.218(i)(1), (2), and (4) may be exceeded by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions must not exceed 1.5 dB or 15 percent of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5 percent of the time during which the excess is no more than 4.0 dB.

* * * * *

■ 15. Amend § 25.209 by revising paragraphs (c)(1) and (f) to read as follows:

§ 25.209 Earth station antenna performance standards.

* * * * *

(c)(1) An earth station licensed for operation with a GSO FSS space station or registered for reception of transmissions from such a space station pursuant to § 25.115(b)(1) and (b)(3) is not entitled to protection from interference from authorized operation of other stations that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming to the levels specified in paragraphs (a) and (b) of this section.

* * * * *

(f) A GSO FSS earth station with an antenna that does not conform to the applicable standards in paragraphs (a) and (b) of this section will be authorized only if the applicant demonstrates that the antenna will not cause unacceptable interference. This demonstration must show that the transmissions of the earth station comport with the requirements in § 25.218 or § 25.223, or the applicant must demonstrate that the operations of the earth station have been coordinated under § 25.220.

* * * * *

■ 16. Amend § 25.212 by revising paragraphs (c), (d), (g), and (h) to read as follows:

§ 25.212 Narrowband analog transmissions and digital transmissions in the GSO Fixed Satellite Service.

* * * * *

(c)(1) An earth station, other than an ESIM, may be routinely licensed for analog transmissions in the conventional Ku-band or the extended Ku-band with bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) if the input power spectral density into the antenna will not exceed −8 dBW/4 kHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

(2) An earth station may be routinely licensed for digital transmission, including digital video transmission, in the conventional Ku-band, or, except for an ESIM, in the extended Ku-band, if input power spectral density into the antenna will not exceed −14 dBW/4 kHz and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

(d) An individual earth station may be routinely licensed for digital transmission in the conventional C-band or, except for an ESIM, in the extended C-band, if the applicant certifies conformance with relevant antenna performance standards in § 25.209(a) and (b), and power density into the antenna will not exceed −2.7 dBW/4 kHz. An individual earth station, other than an ESIM, may be routinely licensed for analog transmission with carrier bandwidths up to 200 kHz (or up to 1

MHz for command carriers at the band edge) in the conventional C-band or the extended C-band, if the applicant certifies conformance with relevant antenna performance standards in § 25.209(a) and (b), and power density into the antenna will not exceed +0.5 dBW/4 kHz.

* * * * *

(g) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the applicable off-axis EIRP density limits permissible for a single earth station, as specified in § 25.218.

(h) Applications for authority for fixed earth station operation in the conventional C-band, the extended C-band, the conventional Ku-band, the extended Ku-band or the conventional Ka-band that do not qualify for routine processing under relevant criteria in this section, § 25.211, or § 25.218 are subject to the requirements in § 25.220.

■ 17. Amend § 25.218 by revising paragraphs (a), (b), and (i) and adding paragraph (j) to read as follows:

§ 25.218 Off-axis EIRP density envelopes for FSS earth stations transmitting in certain frequency bands.

(a) This section applies to applications for fixed and temporary-fixed FSS earth stations transmitting to geostationary space stations in the conventional C-band, extended C-band, conventional Ku-band, extended Ku-band, or conventional Ka-band, and applications for ESIMs transmitting in the conventional C-band, conventional Ku-band, or conventional Ka-band, except for applications proposing transmission of analog command signals at a band edge with bandwidths greater than 1 MHz or transmission of any other type of analog signal with bandwidths greater than 200 kHz.

(b) Earth station applications subject to this section may be routinely processed if they meet the applicable off-axis EIRP density envelopes set forth in this section.

* * * * *

(i) *Digital earth station operation in the conventional Ka-band.* (1) For co-polarized transmissions in the plane tangent to the GSO arc:

32.5–25log(θ)	dBW/MHz	for	2.0° ≤ θ ≤ 7°.
11.5	dBW/MHz	for	7° ≤ θ ≤ 9.2°.
35.5–25log(θ)	dBW/MHz	for	9.2° ≤ θ ≤ 19.1°.
3.5	dBW/MHz	for	19.1° < θ ≤ 180°.

where θ is as defined in paragraph (c)(1) of this section.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc:

35.5–25log(θ)	dBW/MHz	for	3.5° ≤ θ ≤ 7°.
14.4	dBW/MHz	for	7° < θ ≤ 9.2°.
38.5–25log(θ)	dBW/MHz	for	9.2° < θ ≤ 19.1°.
6.5	dBW/MHz	for	19.1° < θ ≤ 180°.

where θ is as defined in paragraph (c)(1) of this section.

(3) The EIRP density levels specified in paragraphs (i)(1) and (2) of this section may be exceeded by up to 3 dB, for values of θ > 7°, over 10% of the range of theta (θ) angles from 7–180° on each side of the line from the earth station to the target satellite.

(4) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

22.5–25log(θ)	dBW/MHz	for	2.0° < θ ≤ 7.0°.

where θ is as defined in paragraph (c)(1) of this section.

(5) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the off-axis EIRP density limits permissible for a single earth station, as specified in paragraphs (i)(1) through (4) of this section.

(j) Applications for authority for fixed earth station operation in the conventional C-band, extended C-band, conventional Ku-band, extended Ku-band, or conventional Ka-band that do not qualify for routine processing under relevant criteria in this section, § 25.211, or § 25.212 are subject to the requirements in § 25.220.

■ 18. Amend § 25.220 by revising paragraph (a) to read as follows:

§ 25.220 Non-routine transmit/receive earth station operations.

(a) The requirements in this section apply to applications for, and operation of, earth stations transmitting in the conventional or extended C-bands, the conventional or extended Ku-bands, or the conventional Ka-band that do not qualify for routine licensing under relevant criteria in § 25.211, § 25.212, or § 25.218.

* * * * *

§ 25.221 [Removed and Reserved]

■ 19. Remove and reserve § 25.221.

§ 25.222 [Removed and Reserved]

■ 20. Remove and reserve § 25.222.

§ 25.226 [Removed and Reserved]

■ 21. Remove and reserve § 25.226.

§ 25.227 [Removed and Reserved]

■ 22. Remove and reserve § 25.227.

■ 23. Add § 25.228 to read as follows:

§ 25.228 Operating and coordination requirements for earth stations in motion (ESIMs).

(a) ESIM transmissions must comport with the applicable EIRP density limits in § 25.218, unless coordinated pursuant to the requirements in § 25.220.

(b) Each ESIM must be self-monitoring and, should a condition occur that would cause the ESIM to exceed its authorized off-axis EIRP density limits, the ESIM must automatically cease transmissions within 100 milliseconds, and not resume transmissions until the condition that caused the ESIM to exceed those limits is corrected.

(c) Each ESIM must be monitored and controlled by a network control and monitoring center (NCMC) or equivalent facility. Each ESIM must comply with a ''disable transmission'' command from the NCMC within 100 milliseconds of receiving the command. In addition, the NCMC must monitor the operation of each ESIM in its network, and transmit a ''disable transmission'' command to any ESIM that operates in such a way as to exceed the authorized off-axis EIRP density limit for that ESIM or for all ESIMs that simultaneously transmit on the same frequency to the same target satellite receiving beam. The NCMC must not allow the ESIM(s) under its control to resume transmissions until the condition that caused the ESIM(s) to exceed the authorized EIRP density limits is corrected.

(d) ESIM licensees must ensure installation of ESIM terminals on vehicles by qualified installers who have an understanding of the antenna's radiation environment and the measures best suited to maximize protection of the general public and persons operating the vehicle and equipment. An ESIM terminal exhibiting radiation exposure levels exceeding 1.0 mW/cm^2 in accessible areas, such as at the exterior surface of the radome, must have a label attached to the surface of the terminal warning about the radiation hazard and must include thereon a diagram showing the regions around the terminal where the radiation levels could exceed the maximum radiation exposure limit specified in 47 CFR 1.1310 Table 1.

(e) The following requirements govern all ESV operations:

(1) ESV operators must control all ESVs by a NCMC located in the United States, except that an ESV on U.S.-registered vessels may operate under control of a NCMC location outside the United States provided the ESV operator maintains a point of contact within the United States that will have the capability and authority to cause an ESV on a U.S.-registered vessel to cease transmitting if necessary.

(2) There must be a point of contact in the United States, with phone number and address, available 24 hours a day, seven days a week, with authority and ability to cease all emissions from the ESVs, either directly or through the facilities of a U.S. NCMC or a NCMC located in another country with which the United States has a bilateral agreement that enables such cessation of emissions.

(3) ESV NCMC operators communicating with ESVs on vessels of foreign registry must maintain detailed information on each such vessel's country of registry and a point of contact for the relevant administration responsible for licensing those ESVs.

(f) For all VMES operations, there must be a point of contact in the United States, with phone number and address, available 24 hours a day, seven days a week, with authority and ability to cease all emissions from the VMESs.

(g) The following requirements govern all ESAA operations:

(1) There must be a point of contact in the United States, with phone number and address, available 24 hours a day, seven days a week, with authority and ability to cease all emissions from the ESAAs.

(2) All ESAA terminals operated in U.S. airspace, whether on U.S.-registered civil aircraft or non-U.S.-registered civil aircraft, must be licensed by the Commission. All ESAA terminals on U.S.-registered civil aircraft operating outside of U.S. airspace must be licensed by the Commission, except as provided by section 303(t) of the Communications Act.

(3) Prior to operations within a foreign nation's airspace, the ESAA operator must ascertain whether the relevant administration has operations that could be affected by ESAA terminals, and must determine whether that administration has adopted specific requirements concerning ESAA operations. When the aircraft enters foreign airspace, the ESAA terminal must operate under the Commission's rules, or those of the foreign administration, whichever is more constraining. To the extent that all relevant administrations have identified geographic areas from which ESAA operations would not affect their radio operations, ESAA operators may operate within those identified areas without further action. To the extent that the foreign administration has not adopted requirements regarding ESAA operations, ESAA operators must coordinate their operations with any potentially affected operations.

(h) The following requirements govern all operations in the 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space) frequency bands of ESVs receiving from or transmitting to GSO satellites in the Fixed-Satellite Service:

(1) ESVs must not operate in the 5925–6425 MHz (Earth-to-space) and 3700–4200 MHz (space-to-Earth) frequency bands on vessels smaller than 300 gross tons.

(2) ESV operators transmitting in the 5925–6425 MHz (Earth-to-space) frequency band to GSO satellites in the Fixed-Satellite Service (FSS) must not seek to coordinate, in any geographic location, more than 36 megahertz of uplink bandwidth on each of no more than two GSO FSS satellites.

(3) ESVs, operating while docked, for which coordination with terrestrial stations in the 3700–4200 MHz band is completed in accordance with § 25.251, will receive protection from such terrestrial stations in accordance with the coordination agreements, for 180 days, renewable for 180 days.

(4) ESVs in motion must not claim protection from harmful interference from any authorized terrestrial stations to which frequencies are already assigned, or any authorized terrestrial station to which frequencies may be assigned in the future in the 3700–4200 MHz (space-to-Earth) frequency band.

(5) ESVs operating within 200 km from the baseline of the United States, or within 200 km from a U.S.-licensed fixed service offshore installation, must complete coordination with potentially affected U.S.-licensed fixed service operators prior to operation. The coordination method and the interference criteria objective will be determined by the frequency coordinator. The details of the coordination must be maintained and available at the frequency coordinator, and must be filed with the Commission electronically via the International Bureau Filing System (*http://licensing.fcc.gov/myibfs/*) to be placed on public notice. The coordination notifications must be filed in the form of a statement referencing the relevant call signs and file numbers. Operation of each individual ESV may commence immediately after the public notice that identifies the notification sent to the Commission is released. Continuance of operation of that ESV for the duration of the coordination term must be dependent upon successful completion of the normal public notice process. If, prior to the end of the 30-day comment period of the public notice, any objections are received from U.S.-licensed Fixed Service operators that

have been excluded from coordination, the ESV licensee must immediately cease operation of that particular station on frequencies used by the affected U.S.-licensed Fixed Service station until the coordination dispute is resolved and the ESV licensee informs the Commission of the resolution. As used in this section, ''baseline'' means the line from which maritime zones are measured. The baseline is a combination of the low-water line and closing lines across the mouths of inland water bodies and is defined by a series of baseline points that include islands and ''low-water elevations,'' as determined by the U.S. Department of State's Baseline Committee.

(6) An ESV must automatically cease transmission if the ESV operates in violation of the terms of its coordination agreement, including, but not limited to, conditions related to speed of the vessel or if the ESV travels outside the coordinated area, if within 200 km from the baseline of the United States, or within 200 km from a U.S.-licensed fixed service offshore installation. Transmissions may be controlled by the ESV network control and monitoring center. The frequency coordinator may decide whether ESV operators should automatically cease transmissions if the vessel falls below a prescribed speed within a prescribed geographic area.

(7) ESV transmissions in the 5925–6425 MHz (Earth-to-space) band shall not exceed an EIRP spectral density towards the radio-horizon of 17 dBW/MHz, and shall not exceed an EIRP towards the radio-horizon of 20.8 dBW. The ESV network shall shut-off the ESV transmitter if either the EIRP spectral density towards the radio-horizon or the EIRP towards the radio-horizon is exceeded.

(i) For ESAA transmissions in the 14.0–14.5 GHz band from international airspace within line-of-sight of the territory of a foreign administration where fixed service networks have primary allocation in this band, the maximum power flux density (pfd) produced at the surface of the Earth by emissions from a single aircraft carrying an ESAA terminal must not exceed the following values unless the foreign Administration has imposed other conditions for protecting its fixed service stations:

$-132 + 0.5 \cdot \theta$	dB(W/(m^2 · MHz))	For	$\theta \leq 40°$.
-112	dB(W/(m^2 · MHz))	For	$40° < \theta \leq 90°$.

Where: θ is the angle of arrival of the radio-frequency wave (degrees above the horizontal) and the aforementioned limits relate to the pfd under free-space propagation conditions.

(j) The following requirements govern all ESIMs transmitting to GSO satellites in the Fixed-Satellite Service in the 14.0–14.5 GHz band:

(1) Operations of ESIMs in the 14.0–14.2 GHz (Earth-to-space) frequency band within 125 km (for ESVs and VMESs) or within radio line of sight (for ESAAs) of the NASA TDRSS facilities on Guam (latitude 13°36′55″ N, longitude 144°51′22″ E), White Sands, New Mexico (latitude 32°20′59″ N, longitude 106°36′31″ W and latitude 32°32′40″ N, longitude 106°36′48″ W), or Blossom Point, Maryland (latitude 38°25′44″ N, longitude 77°05′02″ W) are subject to coordination with the National Aeronautics and Space Administration (NASA) through the National Telecommunications and Information Administration (NTIA) Interdepartment Radio Advisory Committee (IRAC). Licensees must notify the International Bureau once they have completed coordination. Upon receipt of such notification from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. When NTIA seeks to provide similar protection to future TDRSS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's International Bureau that the site is nearing operational status. Upon public notice from the International Bureau, all Ku-band ESIM licensees must cease operations in the 14.0–14.2 GHz band within 125 km (for ESVs and VMESs) or within radio line of sight (for ESAAs) of the new TDRSS site until the licensees complete coordination with NTIA/IRAC for the new TDRSS facility. Licensees must notify the International Bureau once they have completed coordination for the new TDRSS site. Upon receipt of such notification from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. The ESIM licensee then will be permitted to commence operations in the 14.0–14.2 GHz band within 125 km (for ESVs and VMESs) or within radio line of sight (for ESAAs) of the new TDRSS site, subject to any operational constraints developed in the coordination process.

(2) Within 125 km (for ESVs and VMESs) or within radio line of sight (for ESAAs) of the NASA TDRSS facilities identified in paragraph (j)(1) of this section, ESIM transmissions in the 14.0–14.2 GHz (Earth-to-space) band shall not exceed an EIRP spectral density towards the horizon of 12.5 dBW/MHz, and shall not exceed an EIRP towards the horizon of 16.3 dBW.

(3) Operations of ESIMs in the 14.47–14.5 GHz (Earth-to-space) frequency band in the vicinity (for ESVs and VMESs) or within radio line of sight (for ESAAs) of radio astronomy service (RAS) observatories observing in the 14.47–14.5 GHz band are subject to coordination with the National Science Foundation (NSF). The appropriate NSF contact point to initiate coordination is Electromagnetic Spectrum Management Unit, NSF, Division of Astronomical Sciences, 2415 Eisenhower Avenue, Arlington VA 22314; Email: *esm@nsf.gov.* Licensees must notify the International Bureau once they have completed coordination. Upon receipt of the coordination agreement from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. Table 1 provides a list of each applicable RAS site, its location, and the applicable coordination zone.

TABLE 1 TO § 25.228(j)(3)—APPLICABLE RADIO ASTRONOMY SERVICE (RAS) FACILITIES AND ASSOCIATED COORDINATION DISTANCES

Observatory	Latitude (north)	Longitude (west)	Radius (km) of coordination zone
Arecibo, Observatory, Arecibo, PR	18°20′37″	66°45′11″	Island of Puerto Rico.
Green Bank, WV	38°25′59″	79°50′23″	160.

TABLE 1 TO § 25.228(j)(3)—APPLICABLE RADIO ASTRONOMY SERVICE (RAS) FACILITIES AND ASSOCIATED COORDINATION DISTANCES—Continued

Observatory	Latitude (north)	Longitude (west)	Radius (km) of coordination zone
Very Large Array, near Socorro, NM	34°04′44″	107°37′06″	160.
Pisgah Astronomical Research Institute, Rosman, NC	35°11′59″	82°52′19″	160.
U of Michigan Radio Astronomy Observatory, Stinchfield Woods, MI	42°23′56″	83°56′11″	160.
Very Long Baseline Array (VLBA) stations:			
Owens Valley, CA	37°13′54″	118°16′37″	160*.
Mauna Kea, HI	19°48′05″	155°27′20″	50.
Brewster, WA	48°07′52″	119°41′00″	50.
Kitt Peak, AZ	31°57′23″	111°36′45″	50.
Pie Town, NM	34°18′04″	108°07′09″	50.
Los Alamos, NM	35°46′30″	106°14′44″	50.
Fort Davis, TX	30°38′06″	103°56′41″	50.
North Liberty, IA	41°46′17″	91°34′27″	50.
Hancock, NH	42°56′01″	71°59′12″	50.
St. Croix, VI	17°45′24″	64°35′01″	50.

*Owens Valley, CA operates both a VLBA station and single-dish telescopes.

(4) When NTIA seeks to provide similar protection to future RAS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's International Bureau that the site is nearing operational status. Upon public notice from the International Bureau, all Ku-band ESIMs licensees must cease operations in the 14.47–14.5 GHz band within the relevant geographic zone (160 kms for single-dish radio observatories and Very Large Array antenna systems and 50 kms for Very Long Baseline Array antenna systems for ESVs and VMESs, radio line of sight for ESAAs) of the new RAS site until the licensees complete coordination for the new RAS facility. Licensees must notify the International Bureau once they have completed coordination for the new RAS site and must submit the coordination agreement to the Commission. Upon receipt of such notification from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party opposed the operations. The ESIMs licensee then will be permitted to commence operations in the 14.47–14.5 GHz band within the relevant coordination distance around the new RAS site, subject to any operational constraints developed in the coordination process.

(5) ESIMs licensees must use Global Positioning Satellite-related or other similar position location technology to ensure compliance with the provisions of subparagraphs 1–3 of this paragraph.

■ 24. Amend § 25.258 by revising paragraph (b) to read as follows:

§ 25.258 Sharing between NGSO MSS feeder-link stations and GSO FSS services in the 29.25–29.5 GHz band.

* * * * *

(b) Licensed GSO FSS earth stations in the vicinity of operational NGSO MSS feeder-link earth station complexes must, to the maximum extent possible, operate with frequency/polarization selections that will minimize unacceptable interference with reception of GSO FSS and NGSO MSS uplink transmissions in the 29.25–29.5 GHz band. Earth station licensees operating with GSO FSS systems shall be capable of providing earth station locations to support coordination of NGSO MSS feeder link stations under paragraphs (a) and (c) of this section. Operation of ubiquitously deployed GSO FSS earth stations in the 29.25–29.5 GHz frequency band must conform to the rules contained in § 25.218(i).

* * * * *

§ 25.287 [Amended]

■ 25. Amend § 25.287 by removing paragraph (d).

■ 26. Add § 25.290 to subpart D to read as follows:

§ 25.290 Responsibility of licensee for blanket-licensed earth station operation.

The holder of an FCC blanket earth station license is responsible for operation of any earth station under that license. Operators of satellite networks and systems must not transmit communications to or from such earth stations in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket earth station license or under a service contract with another party with authority for such operation delegated by such a blanket licensee.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XY040

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of the 2019 Atka mackerel incidental catch allowance (ICA) for the Bering Sea subarea and Eastern Aleutian district (BS/EAI) to the Amendment 80 cooperative allocation in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2019 total allowable catch of Atka mackerel in the BSAI to be fully harvested.

DATES: Effective 12 hrs Alaska local time (A.l.t.), October 4, 2019 through 2400 hrs, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

BSAI 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.

The 2019 Atka mackerel ICA for the BS/EAI is 800 metric tons (mt) and the 2019 Atka mackerel total allowable catch allocated to the Amendment 80 cooperative is 18,452 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

The Administrator, Alaska Region, NMFS, has determined that 400 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 400 mt of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperative in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permit for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) are revised as follows: 400 mt of Atka mackerel for the BS/EAI ICA and 18,842 mt of Atka mackerel for the Amendment 80 cooperative allocations in the BS/EAI. Table 6 is revised and republished in its entirety as follows:

TABLE 6—FINAL 2019 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2019 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian district [5]	Western Aleutian district
TAC	n/a	23,970	14,390	19,591
CDQ reserve	Total	2,565	1,540	2,096
	A	1,282	770	1,048
	Critical Habitat	n/a	462	629
	B	1,282	770	1,048
	Critical Habitat	n/a	462	629
Non-CDQ TAC	n/a	21,405	12,850	17,495
ICA	Total	400	75	20
Jig [7]	Total	103	.....	.....
BSAI trawl limited access	Total	2,050	1,278	.....
	A	1,025	639	.....
	Critical Habitat	n/a	383	.....
	B	1,025	639	.....
	Critical Habitat	n/a	383	.....
Amendment 80 sector	Total	18,852	11,498	17,475
	A	9,426	5,749	8,737
	Critical Habitat	n/a	3,449	5,242
	B	9,426	5,749	8,737
	Critical Habitat	n/a	3,449	5,242

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; § 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and § 679.20(a)(8)(ii)(C)(*2*) requires the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2019 at 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BS/EAI 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 reallocation of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperative in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate

notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 26, 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.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 2, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–21895 Filed 10–3–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 195
Tuesday, October 8, 2019

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0083; FRL–10000–94–OAR]

RIN 2060–AT03

National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Residual Risk and Technology Review; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopen comment period.

SUMMARY: On August 16, 2019, the Environmental Protection Agency (EPA) proposed a rule titled ''National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Residual Risk and Technology Review.'' The EPA is reopening the comment period on the proposed rule that originally closed on September 30, 2019. The comment period will remain open to allow additional time for stakeholders to review and comment on the proposal.

DATES: The public comment period for the proposed rule published in the **Federal Register** on August 16, 2019 (84 FR 42704), is being reopened. Written comments must be received on or before November 7, 2019.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0083, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2002–0083 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2002–0083.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2002–0083, 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. Do not submit information that you consider to be Confidential Business Information (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's 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 part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2002–0083.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Dr. Donna Lee Jones, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5251; fax number: (919) 541–4991; and email address: *jones.donnalee@epa.gov.* For specific information regarding the risk assessment methodology, contact Ted

Palma, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5470; fax number: (919) 541–0840; and email address: *palma.ted@epa.gov*. For information about monitoring and testing requirements, contact Kevin McGinn, Sector Policies and Programs Division (D230–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3796; fax number: (919) 541–4991; and email address: *mcginn.kevin@epa.gov*. For information about the applicability of the Integrated Iron and Steel National Emission Standards for Hazardous Air Pollutants to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington DC 20460; telephone number: (202) 564–7027; and email address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: To allow for additional time for stakeholders to provide comments and to review additional items submitted to the docket, the EPA has decided to reopen the public comment period until November 7, 2019.

Dated: October 2, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–21827 Filed 10–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2019–0529; FRL–10000–60]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (19–6.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for seven chemical substances which are the subject of premanufacture notices (PMNs). This action would require persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these seven chemical substances for an activity that is designated as a significant new use by this proposed rule. This action would further require that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice, and EPA has conducted a review of the notice, made an appropriate determination on the notice under TSCA and has taken any risk management actions as are required as a result of that determination.

DATES: Comments must be received on or before November 7, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0529, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

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

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these proposed SNURs would need to certify their compliance with the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after November 7, 2019 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA *through regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html*.

II. Background

A. What action is the agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for chemical substances which were the subjects of PMNs P–17–109, P–17–234, P–17–400, P–18–92, P–18–105, P–18–295, and P–19–113. These proposed SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

The record for the proposed SNURs on these chemicals was established as docket EPA–HQ–OPPT–2019–0529. That record includes information considered by the Agency in developing these proposed SNURs.

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the conditions of use of the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is proposing to designate those reasonably foreseen conditions of use as significant new uses.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for seven chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.

This information may include testing not required to be conducted but which would help characterize the potential health and/or environmental effects of the PMN substance. Any recommendation for information identified by EPA was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the chemical substance. Further, any such testing identified by EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models. EPA also recognizes that whether testing/further information is needed will depend on the specific exposure and use scenario in the SNUN. EPA encourages all SNUN submitters to contact EPA to discuss any potential future testing. See Unit VII. for more information.

- CFR citation assigned in the regulatory text section of these proposed rules.

The regulatory text section of these proposed rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

The chemical substances that are the subject of these proposed SNURs are undergoing premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use for these chemicals. EPA is proposing to designate these reasonably foreseen and other potential conditions of use as significant new uses. As a result, those conditions of use are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

The substances subject to these proposed rules are as follows:

PMN Number: P–17–109

Chemical name: Alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl- (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as an intermediate for a polyurethane catalyst and as a polyurethane catalyst. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for acute toxicity, irritation and corrosion to the eye, skin, respiratory tract and mucous membranes, neurotoxicity, blood effects, systemic effects, developmental effects, genotoxicity, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

2. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 660 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health and environmental toxicity of the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of acute toxicity, skin corrosion, eye damage, reproductive/developmental toxicity, specific target organ toxicity, genetic toxicity, and environmental toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11412.

PMN Number: P–17–234

Chemical name: Oxirane, 2-(chloromethyl)-, polymer with 2-methyloxirane polymer with oxirane bis(2-aminopropyl) ether.

CAS number: 78390–60–0.

Basis for action: The PMN states that the use of the substance will be as an adhesive intermediate. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for sensitization, carcinogenicity, reproductive effects, lung effects (surfactancy), and toxicity to aquatic organisms at surface water concentrations exceeding 27 ppb, if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use of the PMN substance other than as a chemical intermediate.

2. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 27 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health and environmental toxicity of the PMN substance may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin sensitization, respiratory sensitization, carcinogenicity, reproductive toxicity, specific target organ toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11413.

PMN Number: P–17–400

Chemical name: Terpolymer of vinylidene fluoride, tetrafluoroethylene and 2,3,3,3-tetrafluoropropene (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be in rubber products. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for lung overload if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use of the PMN substance other than as described in the PMN; and

2. Manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of pulmonary effects testing would help characterize the potential health effects of the PMN substance.

CFR citation: 40 CFR 721.11414.

PMN Number: P–18–92

Chemical name: Phosphonium, tributylmethyl-, iodide (1:1).

CAS number: 1702–42–7.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a catalyst used in the manufacture of monoethylene glycol. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for liver effects and neurotoxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

2. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 56 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health and environmental toxicity of the PMN substance may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin corrosion, eye damage, respiratory sensitization, skin sensitization, pulmonary effects, developmental effects and specific target organ toxicity

testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11415.

PMN Number: P–18–105

Chemical name: Phosphorous acid, triisotridecyl ester.

CAS number: 77745–66–5.

Basis for action: The PMN states that the use of the substance will be in rigid and flexible polyvinyl chloride (PVC) processing as a booster of stabilizers. In addition, EPA has reviewed other known conditions of use of the substance as a coatings additive. Based on the physical/chemical properties of the PMN substance, available data for the PMN substance, and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for irritation, sensitization, and systemic and reproductive effects if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use of the PMN substance other than as a booster of PVC stabilizers or as a coatings additive.

2. Use of the PMN substance without a National Institute for Occupational Safety and Health (NIOSH) certified respirator with an assigned protection factor of at least 50 where there is a potential for inhalation exposure, or at least 1000 where spray applied.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin irritation/corrosion, eye damage, and skin sensitization testing would help characterize the potential health effects of the PMN substance.

CFR citation: 40 CFR 721.11416.

PMN Number: P–18–295.

Chemical name: 1,3-Butanediol, (3R)-.

CAS number: 6290–03–5.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an ingredient in the manufacture of consumer cleaning products and as a monomer in the manufacture of plastics products. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for neurological, reproductive, and developmental effects if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use of the PMN substance for other than as a chemical intermediate or other than as an ingredient in cleaning products; and

2. Manufacture within the United States (*i.e.,* import only).

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of neurotoxicity, specific organ toxicity, developmental and reproductive toxicity testing would help characterize the potential health effects of the PMN substance.

CFR citation: 40 CFR 721.11417.

PMN Number: P–19–113

Chemical name: Metal oxide-chloro (generic).

CAS number: Not available

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a flow cell additive. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for acute toxicity, systemic toxicity, reproductive toxicity, developmental toxicity, neurotoxicity, immunotoxicity (asthma), lung cancer, irritation/corrosion, serious eye damage, and toxicity to aquatic organisms at surface water concentrations exceeding 13 ppb, if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use of the PMN substance other than as described in the PMN.

2. Manufacturing, processing, or use of the substance that results in inhalation exposures.

3. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 13 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health and environmental toxicity of the PMN substance may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin irritation/corrosion, eye damage, acute toxicity, specific target organ toxicity, pulmonary effects, reproductive/developmental toxicity, neurotoxicity, carcinogenicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11419.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these proposed SNURs and as further discussed in Unit IV., EPA identified certain other reasonably foreseen conditions of use, in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is proposing to designate these conditions of use as significant new uses to ensure that they are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is proposing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under

TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a proposed SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory*.

VI. Applicability of the Proposed Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule were undergoing premanufacture review at the time of signature of this proposed rule and were not on the TSCA Inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these proposed SNURs, EPA concludes that the proposed significant new uses are not ongoing.

EPA designates October 2, 2019 (date of web posting) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed. In developing this proposed rule, EPA has recognized that, given EPA's general practice of posting proposed rules on its website a week or more in advance of **Federal Register** publication, this objective could be thwarted even before **Federal Register** publication of the proposed rule.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca*.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0263.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This proposed rule would establish SNURs for seven new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA, 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018, only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this proposed rule. As such, EPA has determined that this proposed rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1531–1538 *et seq.*).

E. Executive Order 13132: Federalism

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 30, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11412 through 721.11419 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

* * * * *

Sec.

* * * * *

§ 721.11412 Alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl- (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl- (PMN P–17–109) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 660.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11413 Oxirane, 2-(chloromethyl)-, polymer with 2-methyloxirane polymer with oxirane bis(2-aminopropyl) ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, 2-(chloromethyl)-, polymer with 2-methyloxirane polymer with oxirane bis(2-aminopropyl) ether (PMN P–17–234, CAS No. 78390–60–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 27.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11414 Terpolymer of vinylidene fluoride, tetrafluoroethylene and 2,3,3,3-tetrafluoropropene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as terpolymer of vinylidene fluoride, tetrafluoroethylene and 2,3,3,3-tetrafluoropropene (PMN P–17–400) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j). It is a significant new use to manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11415 Phosphonium, tributylmethyl-, iodide (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphonium, tributylmethyl-, iodide (1:1) (PMN P–18–92, CAS No. 1702–42–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 56.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11416 Phosphorous acid, triisotridecyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphorous acid, triisotridecyl ester (PMN P–18–105, CAS No. 77745–66–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (5)(respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 50, or at least 1,000 if spray applied, (a)(6)(particulate), (b)(concentration set at 1.0%), and (c).

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the chemical substance for other than as a booster of polyvinyl chloride (PVC) stabilizers, or other than as a coatings additive.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (d) and (i) are

applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11417 1,3-Butanediol, (3R)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-butanediol, (3R)- (PMN P–18–295, CAS No. 6290–03–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in 721.80(f) and (g). It is a significant new use to use the chemical substance for other than as an ingredient in cleaning products.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11418 [Reserved].

§ 721.11419 Metal oxide-chloro (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as metal oxide-chloro (PMN P–19–113) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 13.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2019–21718 Filed 10–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2014–0760; FRL–9998–80]

RIN 2070–AB27

Significant New Use Rule on Certain Chemical Substances; Partial Withdrawal (PMN P–13–270)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of proposed rule.

SUMMARY: EPA is withdrawing part of a proposed rule, published in the **Federal Register** on January 7, 2015, that proposed significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for certain chemical substances. This withdrawal covers only the portion of the proposed rule that would have established a SNUR for the chemical substance generically described as aromatic dibenzoate, which was the subject of premanufacture notice (PMN) P–13–270. EPA has received test data for this chemical substance and based on its review is withdrawing the proposed SNUR for the chemical substance.

DATES: As of October 8, 2019, EPA withdraws the proposed addition of 40 CFR 721.10735, which published in the **Federal Register** of January 7, 2015 (80 FR 845) (FRL–9919–23).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0760, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of January 7, 2015 (80 FR 845) (FRL–9919–23). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What proposed SNUR is being withdrawn?

In the **Federal Register** of January 7, 2015 (80 FR 845) (FRL–9919–23), EPA issued proposed SNURs for 13 chemical substances, including the chemical substance generically described as aromatic dibenzoate, which was the subject of PMN P–13–270. EPA proposed a SNUR for this PMN substance that would designate certain activities as significant new uses based on a finding that the substance may cause significant adverse environmental effects and met the concern criteria at § 721.170(b)(4)(ii). The proposed SNUR would require notification before any use of the substance resulting in surface water concentrations exceeding 1 part per billion (ppb). In this **Federal Register** notice, EPA is only withdrawing the single proposed SNUR for PMN P–13–270 (proposed to be codified as 40 CFR 721.10735).

III. Why is that proposed SNUR being withdrawn?

Prior to the proposed SNUR, in the **Federal Register** of July 9, 2014 (79 FR 39268) (FRL–9910–01), EPA issued a direct final SNUR on this chemical substance in accordance with the procedures in 40 CFR 721.160(c)(3)(i). EPA received a notice of intent to submit adverse comments on the direct final SNUR, and, as required by 4 CFR 721.160(c)(3)(ii), EPA withdrew the direct final SNUR in the **Federal Register** of September 4, 2014 (79 FR 52563) (FRL–9915–69), which was subsequently followed by the issuance of the proposed rule in the **Federal**

Register of January 7, 2015. The record for both the original direct final SNUR and the direct final SNUR withdrawal for this chemical substance was established as docket EPA–HQ–OPPT–2014–0166, and the record for the subsequent proposed rule was established as docket EPA–HQ–OPPT–2014–0760.

Subsequent to the January 7, 2015 proposed SNUR, the PMN submitter conducted an acute 96-hour toxicity test in nematodes. The data were in agreement with, and further supported (weight-of-evidence), the Agency's original acute aquatic toxicity values of no effects at saturation. The PMN submitter also submitted an aerobic biodegradation study that indicated that the substance is inherently biodegradable under aerobic conditions, with an estimated half-life of 135 days. Due to the low water solubility of the PMN substance (0.004 mg/L), EPA then recommended a chronic sediment toxicity test as potentially useful in evaluating the chronic exposures of the substance in a sediment environment. The PMN submitter conducted this testing, which provided a sediment chronic value of 537.4 mg/kg (geometric mean of the no-observed and low-observed adverse effect concentrations, or NOEC and LOEC), based on the measurement endpoint of emergence ratio for aquatic invertebrates. The concentration of concern (COC) for sediment-dwelling organisms was calculated by EPA, using an uncertainty factor of 10, to be 53.74 mg/kg.

Using a weight-of-evidence approach (taking into account the low water solubility of the substance, no adverse effects at the substance's saturation limit observed in the results from the submitted aqueous test data, and the significant difficulty of getting the substance into aqueous test solutions), EPA considers the substance to have a low (aqueous-only) environmental hazard. Further, the Agency determined that there is low acute and chronic aqueous-only ecological risk for the substance based on anticipated manufacture, processing and use exposure scenarios and low environmental hazard.

EPA calculated a maximum benthic sediment concentration of approximately 50 mg/kg for the substance using the Point Source Calculator (PSC) (*https://www.epa.gov/tsca-screening-tools/point-source-calculator-version-105-psc-v105*) aquatic model to estimate chemical concentrations in sediment from point sources, with low-end receiving stream flow. This sediment concentration value (a reasonable high-end estimate of exposure) is below the sediment-based COC, supporting the conclusion that the sediment concentrations of the substance are not expected to reach the sediment-based COC. As a result, the Agency also determined that the substance does not pose a significant environment risk to sediment-dwelling organisms resulting from the release and use of the substance and concludes that the substance does not meet the criteria under § 721.170(b).

Based on these conclusions from the review of all available scientific evidence, EPA is withdrawing the 2015 proposed SNUR for this chemical substance. Copies of the data and Agency review are available in the docket for the proposed rule, EPA–HQ–OPPT–2014–0760.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 26, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–21719 Filed 10–7–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 195
Tuesday, October 8, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0063]

Notice of Request for Reinstatement of an Information Collection; National Animal Health Monitoring System; Health Management on U.S. Feedlots 2020 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection to conduct the National Animal Health Monitoring System Health Management on U.S. Feedlots 2020 Study.

DATES: We will consider all comments that we receive on or before December 9, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0063.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0063, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0063* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the NAHMS Health Management on U.S. Feedlots 2020 Study, contact Mr. Bill Kelley, Program Analyst, Center for Epidemiology and Animal Health, Veterinary Services, 2150 Centre Avenue, Building B, Fort Collins, CO 80526; (970) 494–7270. For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Health Management on U.S. Feedlots 2020 Study.

OMB Control Number: 0579–0079.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. This authority has been designated to the Animal and Plant Health Inspection Service (APHIS).

In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock, poultry, and aquaculture disease risk factors.

NAHMS studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting data on livestock health. Participation in any NAHMS study is voluntary, and data are confidential.

APHIS plans to conduct the Health Management on U.S. Feedlots 2020 Study as part of an ongoing series of NAHMS studies on the U.S. livestock population. This study will support the following study objectives:

- Describe health management practices on cattle feedlots;
- Estimate the prevalence of producer-reported common feedlot cattle diseases;
- Describe antimicrobial use and stewardship practices;
- Describe attitudes and perceptions of feedlot producers about antimicrobial use, antimicrobial stewardship, and the Veterinary Feed Directive; and
- Describe trends in feedlot cattle health management practices and producer-reported common feedlot cattle diseases.

The study will consist of two phases. In Phase I, the National Agricultural Statistics Service (NASS) will contact selected feedlot producers to collect operational level data and consent to be contacted for the next phase of the study. NASS data collectors will contact producers by telephone to schedule a personal interview to complete the initial questionnaire with the help of an enumerator. The enumerators will also attempt to obtain consent from the producer to be contacted for participation in Phase II of the study. In Phase II, APHIS data collectors will contact consenting respondents to administer the second questionnaire via personal interview.

APHIS will analyze the information collected in both phases of this study to predict or detect national and regional trends of feedlot cattle health; update national and regional production measures for producer, veterinary, and industry reference; and provide factual information on antimicrobial use and stewardship.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.47 hours per response.

Respondents: Feedlot producers.

Estimated annual number of respondents: 5,413.

Estimated annual number of responses per respondent: 1.7.

Estimated annual number of responses: 9,016.

Estimated total annual burden on respondents: 4,202 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All 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.

Done in Washington, DC, this 2nd day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–21924 Filed 10–7–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2019]

Foreign-Trade Zone (FTZ) 155—Calhoun/Victoria Counties, Texas; Notification of Proposed Production Activity; Caterpillar, Inc. (Tractors and Forestry Machines); Victoria, Texas

The Calhoun/Victoria Foreign Trade Zone, Inc., grantee of FTZ 155, submitted a notification of proposed production activity to the FTZ Board on behalf of Caterpillar, Inc. (Caterpillar) located in Victoria, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 27, 2019.

Caterpillar already has authority to produce hydraulic track-type excavators and related fabricated frame assemblies within FTZ 155. The current request would add finished products and foreign-status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Caterpillar from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Caterpillar would be able to choose the duty rates during customs entry procedures that apply to track-type tractors and forestry machines (duty free). Caterpillar would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Oil lubricant; plastic hose assemblies; cork sheets; cork gaskets for fuel tanks; cork plugs; paper certificates; paper envelopes; steel clamps for external mirrors; steel tooling and dies; steel installation crimping tools; steel brackets; flexible exhaust tubes for cooling; steel brackets for wire harnesses; steel plates for wire harnesses; steel plates for whole frame assemblies; heel assemblies; steel frame assembly blocks; steel covers for frame assemblies; undercarriage tracks; walkway assemblies for frame of excavators; steel sheets for frame assemblies; tube assemblies for grease lines; steel doors; radiator shrouds; boom assemblies (whole boom); guard assemblies for frame of excavators; steel pins; ignition systems; horns for excavator cabs; wiper blades for excavator cabs; lighting for excavator cabs; horn assemblies; wiper blade assemblies; mounted cameras; electronic navigational displays; alarm assemblies for rollover/backup protection; guard plates; steel connectors; inertial measurement unit navigational sensors; breakout electrical testing sensors; electrical sensors; and, boot scrapers (steel with plastic bristles) (duty rate ranges from duty-free to 5.3%).

The request indicates that certain materials/components are subject to special duties Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 18, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: October 3, 2019.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2019–21934 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, A–560–815, A–201–830, A–841–805, A–274–804]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Applicable October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2019, the Department of Commerce (Commerce) published the notice of initiation of the sunset reviews of the AD orders [1] on carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago, pursuant to section 751(c)(2) of the Tariff Act of

[1] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002).

1930, as amended (the Act).[2] We received notices of intent to participate in the reviews from the follow companies: Nucor Corporation (Nucor), Commercial Metals Company (CMC), Charter Steel, EVRAZ Rocky Mountain Steel, Liberty Steel USA, and Optimus Steel LLC (hereinafter referred to collectively as Domestic Producers).[3] Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from any other interested parties, nor was a hearing requested. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted expedited (120-day) sunset reviews of the orders.[5]

Scope of the Orders

The merchandise subject to these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

The products subject to these orders are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[6]

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the orders were revoked, are addressed in the accompanying Issues and Decision Memorandum. 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 to all parties in the Central Records Unit, Room B8024 of the main Commerce building. A list of the topics discussed in the Issues and Decision Memorandum is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the AD orders on carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail for these countries would be weighted-average dumping margins up to 94.73, 4.05, 20.11, 369.10, and 11.40 percent, respectively.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: October 2, 2019.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2019–21936 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 25741 (June 4, 2019) (*Third Sunset Review Initiation Notice*).

[3] *See* Domestic Producers' Letter, ''Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Intent to Participate in Review,'' dated June 19, 2019 (Intent to Participate for Brazil Sunset Review); *see also* Domestic Producers' Letters, ''Carbon and Certain Alloy Steel Wire Rod from Indonesia: Notice of Intent to Participate in Review,'' dated June 19, 2019 (Intent to Participate for Indonesia Sunset Review); ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Intent to Participate in Review,'' dated June 19, 2019 (Intent to Participate for Mexico Sunset Review); ''Carbon and Certain Alloy Steel Wire Rod from Moldova: Notice of Intent to Participate in Review,'' dated June 19, 2019 (Intent to Participate for Moldova Sunset Review); and ''Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Notice of Intent to Participate in Review,'' dated June 19, 2019 (Intent to Participate for Trinidad and Tobago Sunset Review).

[4] *See* Domestic Producers' Letter, ''Carbon and Certain Alloy Steel Wire Rod from Brazil: Substantive Response to the Notice of Initiation,'' dated July 3, 2019 (Substantive Response for Brazil Sunset Review); *see also* Domestic Producers' Letter, ''Carbon and Certain Alloy Steel Wire Rod from Indonesia: Substantive Response to the Notice of Initiation,'' dated July 3, 2019 (Substantive Response for Indonesia Sunset Review); ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Substantive Response to the Notice of Initiation,'' dated July 3, 2019 (Substantive Response for Mexico Sunset Review); ''Carbon and Certain Alloy Steel Wire Rod from Moldova: Substantive Response to the Notice of Initiation,'' dated July 3, 2019 (Substantive Response for Moldova Sunset Review); and ''Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Substantive Response to the Notice of Initiation,'' dated July 3, 2019 (Substantive Response for Trinidad and Tobago Sunset Review).

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2019,'' dated June 24, 2019.

[6] For a complete description of the scope of these orders, *see* Memorandum, ''Issues and Decision Memorandum for the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago'' (Issues and Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–821]

Biodiesel From Argentina: Rescission of Countervailing Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on biodiesel from Argentina for the period August 28, 2017 through December 31, 2018.

DATES: Applicable October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Dunne, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2328.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2019, Commerce published a notice of opportunity to request an administrative review of CVD order on biodiesel from Argentina for the period August 28, 2017 through December 31, 2018.[1] On February 28, 2019, the petitioner [2] filed a timely request for review of 18 exporters and importers, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[3] Pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order.[4] On June 27, 2019, the petitioner filed a timely withdrawal of request for the administrative review with respect to all entities for which it had requested a review.[5]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioner, who was the only party to file a request for review, withdrew its request by the 90-day deadline. Accordingly, we are rescinding the administrative review of the CVD order on biodiesel from Argentina for the period August 28, 2017 through December 31, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVD duties on all appropriate entries of biodiesel from Argentina. CVD duties shall be assessed at rates equal to the cash deposit of estimated CVD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of CVD 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 CVD duties occurred and the subsequent assessment of doubled CVD duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 1, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–21926 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] The petitioner is the National Biodiesel Board Fair Trade Coalition, which includes the National Biodiesel Board; American GreenFuels, LLC; Archer Daniels Midland Company; Ag Processing Inc a cooperative; Crimson Renewable Energy LP; High Plains Bioenergy; Integrity Biofuels, LLC; Iowa Renewable Energy, LLC; Lake Erie Biofuels dba HERO BX; Minnesota Soybean Processors; New Leaf Biofuel, LLC; Newport Biodiesel, LLC; Renewable Biofuels, LLC; Renewable Energy Group, Inc.; Western Dubuque Biodiesel, LLC; Western Iowa Energy, LLC; and World Management Group LLC dba World Energy.

[3] *See* Petitioner's Letter, ''Biodiesel from Argentina: Request for Administrative Review of Countervailing Duty Order,'' dated February 28, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019).

[5] *See* Petitioner's Letter, ''Biodiesel from Argentina: Withdrawal of Request for Administrative Review of Countervailing Duty Order,'' dated June 27, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833]

Carbon and Certain Alloy Steel Wire Rod From Brazil: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order

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

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of this countervailing duty (CVD) order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, 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) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2002, Commerce published its CVD order on carbon and certain alloy steel wire rod (wire rod) from Brazil.[1] On July 3, 2014, at the conclusion of the second sunset review, Commerce issued a notice of continuation of the *Order*.[2] On June 4, 2019, Commerce published the notice of initiation of the third sunset review of the CVD order on wire rod from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] Commerce received a notice of intent to participate from the following domestic parties: Nucor Corporation and Commercial Metals Company (collectively, the domestic interested parties),[4] within the deadline specified

[1] *See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55805 (August 30, 2002).

[2] *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: Continuation of Antidumping and Countervailing Duty Orders,* 79 FR 38008 (July 3, 2014).

[3] *See Initiation of Five-Year* (''*Sunset*'') *Review,* 84 FR 25741 (June 4, 2019).

[4] *See* Domestic Interested Parties' Letter, ''*Carbon and Certain Alloy Steel Wire Rod from Brazil:* Notice of Intent to Participate in Review,'' dated June 19, 2019 (in which they noted that Charter Steel, EVRAZ Rocky Mountain Steel, Liberty Steel USA, and Optimus Steel LLC also support the continuation of the order and are willing to participate in this sunset review).

in 19 CFR 351.218(d)(1)(i). Each of the companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of wire rod.

Commerce received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] We did not receive a substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On July 29, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted an expedited (120-day) sunset review of the CVD order on wire rod from Brazil.

Scope of the Order

This order covers certain carbon and alloy steel wire rods. A full description of the scope of the order is contained in the Issues and Decision Memorandum,[7] which is hereby adopted by this notice.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rates likely to prevail if this order were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. A list of the topics discussed in the Issues and Decision Memorandum is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.enforcement.trade.gove/frn/.* The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b)(1) and (3) of the Act, we determine that revocation of the countervailing duty order on wire rod from Brazil would be likely to lead to continuation or recurrence of countervailable subsidy at the rates listed below:

Manufacturers/producers/exporters	Net countervailable subsidy (percent)
Companhia Siderurgica Belgo-Mineira (Belgo Mineira)	6.74
Gerdau S.A	2.31
All Others	4.53

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders 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

This five-year (sunset) review and notice are in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: October 2, 2019.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2019–21937 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Domestic Interested Parties' Letter, ''*Carbon and Certain Alloy Steel Wire Rod from Brazil:* Notice of Intent to Participate in Review,'' {sic} dated July 3, 2019.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2019,'' dated July 29, 2019.

[7] *See* Memorandum, ''Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order on Carbon and Certain Alloy Steel Wire Rod from Brazil,'' dated concurrently with this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–813]

Strontium Chromate From Austria: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that strontium chromate from Austria is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2017 through June 30, 2018. The final estimated weighted-average dumping margins are listed below in the ''Final Determination'' section of this notice.

DATES: Applicable October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, Commerce published in the **Federal Register** the *Preliminary Determination,* in which we also postponed the final determination until September 30, 2019.[1] On June 18, 2019, Commerce published in the **Federal Register** the *Amended Preliminary Determination.*[2] We invited interested parties to comment on the preliminary determination, as amended. A summary of the events that occurred since Commerce published the *Amended Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3]

[1] *See Strontium Chromate from Austria: Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination,* 84 FR 22443, 22443–22445 (May 17, 2019).

[2] *See Strontium Chromate from Austria: Amended Preliminary Determination of Sales at Less Than Fair Value,* 84 FR 28272, 28272–28273 (June 18, 2019) (*Amended Preliminary Determination).*

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Strontium Chromate from Austria,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Investigation

The product covered by this investigation is strontium chromate from Austria. For a full description of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

During the course of this investigation of strontium chromate from Austria, Commerce did not receive scope comments from interested parties. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. 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 B–8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), during May and July 2019, we conducted verification of the cost and sales information submitted by Habich GmbH (Habich), the sole mandatory respondent, for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Habich.[4]

[4] For a discussion of our verification findings, *see* the following memoranda: ''Verification of the Cost Response of Habich GmbH in the Antidumping Duty Investigation of Strontium Chromate from Austria,'' dated July 31, 2019; and ''Verification of the Sales Response of Habich GmbH in the Antidumping Investigation of Strontium Chromate from Austria,'' dated August 14, 2019.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Habich. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Habich, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or determined entirely under section 776 of the Act, the estimated weighted-average dumping margin calculated for Habich is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Habich GmbH	25.90
All Others	25.90

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of strontium chromate from Austria, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after June 18, 2019, the date of publication in the **Federal Register** of the affirmative *Amended Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of strontium chromate from Austria no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of

their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or 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 determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: September 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is strontium chromate, regardless of form (including but not limited to, powder (sometimes known as granular), dispersions (sometimes known as paste), or in any solution). The chemical formula for strontium chromate is SrCrO4 and the Chemical Abstracts Service (CAS) registry number is 7789–06–2.

Strontium chromate that has been blended with another product or products is included in the scope if the resulting mix contains 15 percent or more of strontium chromate by total formula weight. Products with which strontium chromate may be blended include, but are not limited to, water and solvents such as Aromatic 100 Methyl Amyl Ketone (MAK)/2-Heptanone, Acetone, Glycol Ether EB, Naphtha Leicht, and Xylene. Subject merchandise includes strontium chromate that has been processed in a third country into a product that otherwise would be within the scope of this investigation if processed in the country of manufacture of the in-scope strontium chromate.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2841.50.9100. Subject merchandise may also enter under HTSUS subheading 3212.90.0050. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2019–21808 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–830]

Strontium Chromate From France: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that strontium chromate from France is being, or is likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) July 1, 2017 through June 30, 2018. The final estimated weighted-average dumping margins are listed below in the ''Final Determination'' section of this notice.

DATES: Applicable October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Joshua Simonidis, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–0608, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of strontium chromate from France, in which we also postponed the final determination until September 30, 2019.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is strontium chromate from France. For a complete description of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

During the course of this investigation of strontium chromate from France, Commerce did not receive scope comments from interested parties. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. 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 B–8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), during June 2019, we conducted verification of the sales and cost information submitted by Société Nouvelle des Couleurs Zinciques (SNCZ), the sole mandatory respondent, for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by SNCZ.[3]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to

[1] *See Strontium Chromate From France: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 84 FR 22438 (May 17, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Strontium Chromate from France,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

[3] For a discussion of our verification findings, *see* the following memoranda: ''Verification of the Cost Response of Société Nouvelle des Couleurs Zinciques in the Less-than-Fair-Value Investigation of Strontium Chromate from France,'' dated July 18, 2019; and ''Verification of the Sales Response of Société Nouvelle des Couleurs Zinciques in the Antidumping Investigation of Strontium Chromate from France,'' dated July 22, 2019.

the margin calculation for SNCZ. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Use of Adverse Facts Available

At verification SNCZ failed to properly support the amounts reported for inland freight to the port and international freight expenses in its U.S. sales database. Because SNCZ provided information that cannot be verified, the use of facts available pursuant to section 776(a) of the Act is warranted. Moreover, SNCZ failed to act to the best of its ability to comply with Commerce's requests for information within the meaning of section 776(b) of the Act regarding these movement expenses. We, therefore, applied adverse facts available (AFA) to these movement expenses, pursuant to section 776(b) of the Act. As partial AFA, we applied the highest recalculated amounts, based on verification findings, for inland freight to the port and international freight to the U.S. sales database.[4]

All-Others Rate

Section 735(c)(5)(A) of the Act provides that Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for SNCZ, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or determined entirely under section 776 of the Act, the estimated weighted-average dumping margin calculated for SNCZ is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Negative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did not exist with respect to imports of strontium chromate from France because imports were not massive with respect to SNCZ and all other producers and exporters. For this final determination, our determination remains unchanged from that published in the *Preliminary Determination.* Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of strontium chromate from France. For a full description of the methodology and results of Commerce's critical circumstances analysis, see the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Société Nouvelle des Couleurs Zinciques	32.16
All Others	32.16

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of strontium chromate, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after May 17, 2019, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of strontium chromate from France no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or 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 determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: September 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is strontium chromate, regardless of form (including but not limited

[4] For further discussion *see* Issues and Decision Memorandum.

to, powder (sometimes known as granular), dispersions (sometimes known as paste), or in any solution). The chemical formula for strontium chromate is SrCrO4 and the Chemical Abstracts Service (CAS) registry number is 7789–06–2.

Strontium chromate that has been blended with another product or products is included in the scope if the resulting mix contains 15 percent or more of strontium chromate by total formula weight. Products with which strontium chromate may be blended include, but are not limited to, water and solvents such as Aromatic 100 Methyl Amyl Ketone (MAK)/2-Heptanone, Acetone, Glycol Ether EB, Naphtha Leicht, and Xylene. Subject merchandise includes strontium chromate that has been processed in a third country into a product that otherwise would be within the scope of this investigation if processed in the country of manufacture of the in-scope strontium chromate.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2841.50.9100. Subject merchandise may also enter under HTSUS subheading 3212.90.0050. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2019–21807 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation: Preliminary No Shipments Determination of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from the Russian Federation. The period of review (POR) is December 1, 2017 through November 30, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041.

SUPPLEMENTARY INFORMATION:

Background

In response to Commerce's notice of opportunity to request an administrative review on hot-rolled steel from the Russian Federation,[1] Nucor Corporation, AK Steel Corporation, ArcelorMittal USA LLC, United States Steel Corporation, California Steel Industries, Steel Dynamics, Inc., and SSAB Enterprises LLC (domestic interested parties) timely requested an administrative review with respect to Novolipetsk Steel (NLMK), Severstal PAO, and Severstal Export GmbH.[2] On January 28, 2019, Commerce exercised its discretion to toll all deadlines for reviews of antidumping duty orders with December anniversary dates which were affected by the partial government shutdown by 31 days.[3]

On March 14, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on hot-rolled steel from the Russian Federation covering three companies: NLMK, Severstal PAO, and Severstal Export GmbH.[4] Subsequently, on April 9, 2019, Commerce received a letter from NLMK reporting that it had no exports, sales, or entries of subject merchandise into the United States during the POR.[5] On April 18, 2019, Commerce received a letter from Severstal PAO reporting it had no exports, sales, or entries of subject merchandise into the United States during the POR.[6] Similarly, on April 25, 2019, Commerce received a letter from Severstal Export GmbH reporting it had no exports, sales, or entries of subject merchandise into the United States during the POR.[7] On June 28, 2019, we transmitted a ''No-Shipment Inquiry'' to U.S. Customs and Border Protection (CBP) regarding NLMK, Severstal PAO, and Severstal Export GmbH, to which CBP responded that it found no shipments of hot-rolled steel from NLMK, Severstal PAO, and Severstal Export GmbH during the POR.[8]

Scope of the Order

For the purposes of this order, ''hot-rolled steel'' means certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness.

Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 62293 (December 3, 2018).

[2] *See* Domestic Interested Parties' Letter, ''Certain Hot-Rolled Carbon Steel Flat Products from Russia: Request for Administrative Review,'' dated December 31, 2018.

[3] *See* Memorandum to the Record from Steven Presing, ''December Order Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated August 7, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019).

[5] *See* NLMK's Letter, ''Certification of No Shipments for Novolipetsk Steel: Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled-Carbon-Quality Steel Products from the Russian Federation 12/1/2017 to 11/30/2018,'' dated April 9, 2019.

[6] *See* Severstal PAO's Letter, ''Administrative Review of the Antidumping Order on Certain Hot-Rolled Carbon-Quality Steel Products from the Russian Federation: Certification of No Shipments for PAO Severstal,'' dated April 18, 2019.

[7] *See* Severstal Export GmbH's Letter, ''Administrative Review of the Antidumping Order on Certain Hot-Rolled Carbon-Quality Steel Products from the Russian Federation: Certification of No Shipments for JSC Severstal,'' dated April 25, 2019.

[8] *See* Memorandum, ''Hot-rolled flat-rolled carbon-quality steel products from the Russia Federation (Commerce A–821–809; Customs A–462–809),'' dated July 1, 2019 (Customs Liaison Unit Memorandum).

steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 Percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.,* ASTM specifications A543, A387, A514, A517, and A506).

—SAE/AISI grades of series 2300 and higher.

—Ball bearing steels, as defined in the HTSUS.

—Tool steels, as defined in the HTSUS.

—Silica-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

—ASTM specifications A710 and A736.

—USS Abrasion-resistant steels (USS AR 400, USS AR 500).

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16%	0.70%–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max
Mo	.....	.....	.....	.....	.....	.....	.....
0.21% Max	.....	.....	.....	.....	.....	.....	.....

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.70%	0.20% Max
V(wt.)	Cb	.....	.....	.....	.....	.....	.....
0.10% Max	0.08% Max	.....	.....	.....	.....	.....	.....

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	.20% Max
Nb	Ca	Al	.....	.....	.....	.....	.....
0.005% Max	Treated	0.01–0.07%	.....	.....	.....	.....	.....

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface

quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inches nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

Preliminary Determination of No Shipments

Based on record evidence, we preliminarily determine that NLMK, Severstal PAO, and Severstal Export GmbH had no shipments of subject merchandise during the POR. Specifically, CBP indicated that it found no shipments by NLMK, Severstal PAO, and Severstal Export GmbH during the POR.[9] Consistent with Commerce's practice, we find that it is not appropriate to rescind the review with respect to NLMK, Severstal PAO, and Severstal Export GmbH but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of this review.[10]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[12] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce using Enforcement and Compliance's ACCESS system within 30 days after the date of publication of this notice.[14] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions must be filed electronically using ACCESS and served on interested parties.[15] An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time on the date that the document is due.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

Assessment Rates

In accordance with Commerce's practice, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for NLMK, Severstal PAO, and Severstal Export GmbH following issuance of the final results of review. If we continue to find that NLMK, Severstal PAO, and Severstal Export GmbH had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by NLMK, Severstal PAO, and Severstal Export GmbH, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[16]

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

If the final results of review continue to find that NLMK, Severstal PAO, and Severstal Export GmbH had no shipments during the POR, there will be no change to the existing cash deposit requirements.

Notification to Importers

This notice also serves as a preliminary 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.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

[9] *See* Customs Liaison Unit Memorandum.

[10] *See, e.g., Certain Frozen Warmwater Shrimp From Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014); *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.303(f).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Dated: September 30, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–21938 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 190924–0035]

National Cybersecurity Center of Excellence (NCCoE) Securing the Industrial Internet of Things for the Energy Sector

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

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for Securing the Industrial Internet of Things (IIoT) for the energy sector use case. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the energy sector program. Participation in the use case is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than November 7, 2019.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *energy_nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *https://nccoe.nist.gov/node/138.*

FOR FURTHER INFORMATION CONTACT: Jim McCarthy via email to *energy_nccoe@nist.gov;* by telephone 301–975–0228; or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the energy sector program are available at *https://www.nccoe.nist.gov/node/4741.*

SUPPLEMENTARY INFORMATION: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. When the use case has been completed, NIST will post a notice on the NCCoE energy sector program website at *https://www.nccoe.nist.gov/node/4741* announcing the completion of the use case and informing the public that it will no longer accept letters of interest for this use case.

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant cybersecurity and infrastructure capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Securing the IIoT for the energy sector use case. The full use case can be viewed at: *https://www.nccoe.nist.gov/node/4741.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements. NIST will select participants who have submitted complete letters of interest on a first come, first served basis up to the number of participants necessary to carry out this use case. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see the **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Use Case Objective: The objective of this use case is to provide an architecture that can be referenced and develop guidance for securing IIoT in commercial- and/or utility-scale distributed energy resource (DER) environments, and to include an example solution that uses existing, commercially available and/or open-source cybersecurity products. A detailed description of the Securing the IIoT use case is available at *https://www.nccoe.nist.gov/node/4741.*

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components and capabilities are listed in section 4 of the Securing the IIoT for the energy sector use case (for reference, please see the link in the PROCESS section above) and include:

- Access control techniques for network, application, and data access
- Data integrity technologies that protect data at rest or in transit, detect data integrity violations, and ensure data authenticity
- Graph analytics, machine learning, behavioral monitoring, and predictive analytics that aid in detecting malware and data integrity violations
- Information visualization and dashboard techniques that present analytic results to human operators
- Infrastructure components to construct or emulate the elements of the conceptual architecture
- Infrastructure components that incorporate integrity and trustworthiness techniques
- Sensors, network monitoring, system monitoring, data acquisition devices, intelligent sensor gateways, and security information and event management, or SIEM, systems that provide data and event information for analysis
- System/device and human authentication techniques that support federation

- Trustworthy distributed audit trails for accountability
- Workflow techniques to orchestrate analysis

Each responding organization's letter of interest should identify how their products or infrastructure components address one or more of the following desired solution characteristics in section 4 of the Securing the IIoT for the energy sector use case (for reference, please see the link in the PROCESS section above):

1. Analysis and Visualization. The analysis and visualization capabilities collect and process monitoring data from communications, management systems, and control systems to detect anomalies and identify anomalies that represent potential malicious activity.

2. Authentication and Access Control. The authentication and access control capabilities are used on all communication among DER management and control systems. These capabilities ensure that only known, authorized systems/devices can exchange information. Further, these capabilities may limit the types of information exchanged. Attempted unauthorized communication or attempted communication by unknown systems/devices is detected and reported to the analysis and visualization capabilities.

3. Behavioral Monitoring. The behavioral monitoring capabilities measure behavioral characteristics of the management and control systems. Measurements are compared with expected or normal behavioral characteristics that have been learned over time. Anomalies are reported to the analysis and visualization capability.

4. Command Register. The command register capability records transactions between the distribution control system and control systems managing DERs. This capability allows both the utility and the DER operator to verify information exchanges.

5. Data Integrity. Data integrity capabilities ensure that information is not modified in transit between the sender and receiver. If the information is modified, the capabilities detect the modification and notify the analysis and visualization capabilities.

6. Malware Detection. The malware detection capabilities monitor both information exchanges among the DER management and control systems and processing by the management and control systems, looking for indications of compromise by known malware.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the Securing the IIoT for the energy sector use case in NCCoE facilities which will be conducted in a manner consistent with the NIST Cybersecurity Framework, and other relevant standards and guidance listed in section 4 of the Securing the IIoT for the energy sector use case.

Additional details about the Securing the IIoT for the energy sector use case are available at: *https://www.nccoe.nist.gov/node/4741.*

NIST cannot guarantee that all products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Securing the IIoT for the energy sector capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations to the energy community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Securing the IIoT for the energy sector use case. These descriptions will be public information. Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Securing the IIoT for the energy sector capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve the security of IIoT across an entire energy sector enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *https://nccoe.nist.gov/.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–21852 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV099

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting of the North Pacific Fishery Management Council's Charter Halibut Management Committee.

SUMMARY: The North Pacific Fishery Management Council (Council) Charter Halibut Management Committee will meet October 29, 2019.

DATES: The meeting will be held on Tuesday, October 29, 2019, from 10:30 a.m. to 4 p.m., Alaska Standard Time.

ADDRESSES: The meeting will be held in the Old Federal Building, 605 W 4th Ave., Suite 205, Anchorage, AK 99501–2252. Teleconference line: (907) 271–2896.

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: Steve MacLean, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, October 29, 2019

The purpose of the Charter Halibut Management Committee meeting is to identify a range of potential management measures for the Area 2C and Area 3A charter halibut fisheries in 2020 using the management measures in place for 2019 as a baseline. For Area 2C, the baseline management measure includes regulations applicable to charter halibut fishing in all areas, and a daily limit of one fish less than or equal to 38 inches or greater than or

equal to 80 inches. For Area 3A, the baseline management measure includes regulations applicable to charter halibut fishing in all areas, and an annual limit of 4 fish, a daily limit of two fish one fish of any size, and a second fish which must be 28 inches or less in length. No charter halibut fishing on Wednesdays, all year, and no charter halibut fishing on July 16, July 23, July 30, August 6, and August 13. Committee recommendations will be incorporated into an analysis for committee and Council review in December 2019. The Council will recommend preferred management measures for consideration by the International Pacific Halibut commission at its January 2020 meeting, for implementation in 2020.

Meeting materials will be available on the Council's online agenda portal at *https://meetings.npfmc.org/Meeting/Details/983.* The Agenda is subject to change, and the latest version will be posted at: *https://meetings.npfmc.org/.*

Public Comment

Public comment letters will be accepted and should be submitted by Monday, October 28, 2019 via the Council's electronic agenda platform at *https://meetings.npfmc.org/Meeting/Details/983.* In-person oral public testimony will be accepted at the discretion of the Chair.

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: October 3, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–21900 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV085

Western Pacific Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of correction of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 134th Scientific and Statistical Committee (SSC) meeting, American Samoa Archipelago Fishery Ecosystem Plan Advisory Panel (AP), American Samoa Regional Ecosystem Advisory Committee (REAC), Executive and Budget Standing Committee, and its 180th Council meeting to take actions on fishery management issues in the Western Pacific Region. This notice announces the cancellation of the Pelagic and International Standing Committee meeting included in the original notice, corrects the agenda for the Executive and Budget Standing Committee meeting, and corrects the venue for the AP meeting.

DATES: The meetings will be held between October 15 and October 24, 2019. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**. All times listed are local island times.

ADDRESSES: The 134th SSC will be held at the Council Office Conference Room, 1164 Bishop St. Suite 1400, Honolulu HI 96813, phone: (808) 522–8220. The AP and the Executive and Budget Standing Committee will be held at Sadie's by the Sea, Utulei Beach, Route 1, Pago Pago, American Samoa, phone: (684) 633–5900. The REAC and 180th Council meeting will be held at Governor Tauese P.F. Sunia Ocean Center, Pago-Pago, American Samoa, phone: (684) 633–6500.

FOR FURTHER INFORMATION CONTACT: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on September 30, 2019 (84 FR 51519).

The 134th SSC meeting will be held between 8:30 a.m. and 5 p.m. on October 15–17, 2019. The REAC will be held between 9 a.m. and 3 p.m. on October 18, 2019. The AP will be held between 4 p.m. and 6 p.m. on October 18, 2019. The Executive and Budget Standing Committee will be held between 8:30 a.m. and 10:30 a.m. on October 21, 2019. The 180th Council Meeting will be held on October 22, 2019, between 9 a.m. and 5 p.m. with a Public Comment for Non-Agenda Items between 4 p.m. and 5 p.m. and a Fishers Forum between 6 p.m. and 9 p.m. The Council meeting continues on October 23, 2019, between 8:30 p.m. and 5 p.m. and on October 24, 2019, between 8:30 a.m. and 12 noon. Agenda items noted as ''Final Action Items'' refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for 134th SSC Meeting

Tuesday, October 15, 2019, 8:30 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 132nd and 133rd SSC Meeting Recommendations
4. Report from Pacific Islands Fisheries Science Center (PIFSC) Director
5. Program Planning and Research
   - A. Fishing Community Perceptions on of the Marine Protected Area (MPA) Siting Process and its Implications
   - B. Report on SSC Working Group on National Standard (NS) 1 Technical Guidance on Phase-Ins and Carry-Over
   - C. Report on the Pacific Insular Fisheries Monitoring Assessment Planning Summit (PIFMAPS)
   - D. Updates to the Spatial Management Workshop Planning
   - E. Report to Congress on Section 201 of Modernizing Recreational Fisheries Act
   - F. Report on the 2019 Annual Climate Change Collaborative
   - G. Public Comment
   - H. SSC Discussion and Recommendations
6. Island Fisheries
   - A. Report on the Western Pacific Stock Assessment Review (WPSAR) of the Territorial Bottomfish Benchmark Stock Assessment
   - B. Peer-Reviewed Benchmark Stock Assessment of the Bottomfish Management Unit Species Complex in American Samoa, Guam and Commonwealth of Northern Mariana Islands (CNMI)
   - C. Guam Reef Fish Stock Assessment
   - D. Review of the Terms of Reference

for the Main Hawaiian Islands *Aprion virescens* (uku) Benchmark Stock Assessment
E. Public Comment
F. SSC Discussion and Recommendations

Wednesday, October 16, 2019, 8:30 a.m. to 5 p.m.

7. Protected Species
A. False Killer Whale Abundance Estimates
B. Updates on Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Actions
1. Status of ESA Consultations for the Hawaii Deep-Set Longline, American Samoa Longline, and Bottomfish Fisheries
2. Southern Exclusion Zone Potential Reopening Date
3. Insular False Killer Whale Recovery Plan
C. Public Comment
D. SSC Discussion and Recommendations
8. Pelagic Fisheries
A. American Samoa Longline Fishery Report
B. Hawaii Longline Report Fishery Report
C. Oceanic Whitetip Shark Assessment and Projections
D. Pelagic Fisheries Research Plan Updates
E. Update on Electronic Reporting in the Hawaii Longline Fisheries
F. Assessing Population Level Impacts of Marine Turtle Interactions in the Hawaii and American Samoa Longline Fisheries
G. Evaluating Additional Mitigation Measures under the Hawaii Shallow-set Longline Fishery Biological Opinion Reasonable and Prudent Measures
H. International Fisheries Meetings
1. Inter-American Tropical Tuna Commission (IATTC) Annual Meeting
2. 19th International Science Committee (ISC) Plenary Outcomes
3. 15th Western-Central Pacific Fisheries Commission (WCPFC) Science Committee (SC)
4. WCPFC Technical and Compliance Committee
5. WCPFC Permanent Advisory Committee
6. WCPFC Northern Committee
I. Public Comment
J. SSC Discussion and Recommendations

Thursday, October 17, 2019, 8:30 a.m. to 5 p.m.

9. Other Business
A. 2020 SSC Meetings Dates
10. Summary of SSC Recommendations to the Council

Agenda for the REAC Meeting

Friday, October 18, 2019, 9 a.m. to 3 p.m.

1. Welcome and Introductions
2. Overview of the REAC 2018 meeting
3. Information Sourcing for Local Fishery Ecosystem Impacts of Climate Change
4. Information Sourcing for Local Data Sources to Support Research
5. Setting Local Research Priorities for Climate Change Impacts on the Fishery Ecosystem (Including Pelagics)
6. Geographic Information System (GIS) Mapping of Fishing Grounds and Coral Reef Coverage
7. Climate Change Adaptation Framework
8. Sanctuary Action Plan(s)
9. Discussion on Coral Reef Grant Projects
10 Public Comment
11. Other Business
12. Discussion and Recommendations

Agenda for the AP Meeting

Friday, October 18, 2019, 4 p.m. to 6 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. 180th Council Meeting Action Items and Issues
A. Territorial Bottomfish Stock Assessment
B. Pacific Insular Fisheries Monitoring and Assessment Planning Summit
4. American Samoa Reports
A. Community Report
B. Education Report
C. Island Report
D. Legislative Report
5. Island Fishery Issues & Activities
A. Issues
1. US Coast Guard (USCG) Rotation Working Group Report
B. Activities
1. Longline Fresh Fish Sustainable Fisheries Fund (SFF) Project
2. Bottomfish Training SFF Project
3. American Samoa Education and Outreach SFF Project
6. Public Comments
7. Discussion and Recommendations
8. Other Business

Agenda for Executive and Budget Standing Committee

Monday, October 21, 2019, 8:30 a.m. to 10:30 a.m.

1. Financial Reports
A. Current Grants
B. New Grants
2. Administrative Reports
3. Freedom of Information Act (FOIAs) and Congressional Requests
4. Council Statement Organization Practices and Procedures (SOPP)
5. Policy on Indirect Cost
6. Pelagic Fishery Issues
7. Council Coordinating Committee (CCC)
A. Geographic Strategic Plan
B. Council Member Ongoing Development
8. Council Family Changes
9. Meetings and Workshops
10. Election of Officers
11. Other Issues
12. Public Comment
13. Discussion and Recommendations

Agenda for 180th Council Meeting

Tuesday, October 22, 2019, 9 a.m. to 5 p.m.

1. Welcoming Ceremony
2. Remarks by Honorable Governor Lolo Matalasi Moliga
3. Welcome and Introductions
4. Oath of Office
5. Approval of the 180th Agenda
6. Approval of the 178th and 179th Meeting Minutes
7. Executive Director's Report
8. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. PIFSC
B. NOAA Office of General Counsel, Pacific Islands Section
C. National Marine Sanctuary Update
D. U.S. State Department
E. U.S. Fish and Wildlife Service
F. Enforcement
1. U.S. Coast Guard
a. Report on USCG Rotation Working Group Meeting
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel, Enforcement Section
G. Public Comment
H. Council Discussion and Action
9. American Samoa Archipelago
A. Motu Lipoti
1. Data Collection Programs and Fishery Presentations
2. Report on Data Collection Improvement Efforts from PIFMAPS
3. National Marine Sanctuary of American Samoa Research Plan
B. Fono Report
C. Enforcement Issues
1. Marine Safety Detachment Rotation Update
D. Community Activities and Issues
1. American Samoa Ocean Plan
2. American Samoa Gross Domestic Product and Importance of the Cannery
3. American Samoa Government Development Projects
a. Aunu'u Alia Development Project
b. Malaloa Dock Expansion
c. Longline Fresh Fish Project

d. Bottomfish Fresh Fish Project
4. Fagatogo Fish Market
5. Fishing Tournaments
a. 2nd Pago Pago Open Fishing Tournament
b. 1st All Manua Alia Fishing Tournament
E. Education and Outreach Initiatives
1. AS High School Summer Course Recap
F. Advisory Group Report and Recommendations
1. American Samoa Fishery Ecosystem Plan AP
2. American Samoa REAC
3. SSC
G. Public Comment
H. Council Discussion and Action

Tuesday, October 22, 2019, 4 p.m. to 5 p.m.

10. Public Comment on Non-Agenda Items

Tuesday, October 22, 2019, 6 p.m. to 9 p.m.

Fishers Forum—Palolo Harvest: Science and Traditions

Wednesday, October 23, 2019, 8:30 a.m. to 5 p.m.

11. Pelagic & International Fisheries
A. American Samoa Longline Annual Fishery Report
B. Hawaii Longline Annual Fishery Report
C. Oceanic Whitetip Shark Stock Assessment and Projections
D. Evaluating Additional Mitigation Measures under the Hawaii Shallow-set Longline Fishery Biological Opinion Reasonable and Prudent Measures
E. Assessing Population Level Impacts of Marine Turtle Interactions in the Hawaii and American Samoa Longline Fisheries
F. Electronic Reporting in the Hawaii Longline Fishery
1. Status of Electronic Reporting Implementation
2. Mandatory Electronic Reporting
G. International Fisheries
1. IATTC Commission Meeting
2. WCPFC
a. 19th ISC Plenary
b. 15th Science Committee
c. 15th Technical and Compliance Committee
d. 15th Northern Committee
e. Permanent Advisory Committee
3. North Pacific Fisheries Commission
a. 4th Technical and Compliance Committee
b. 5th Annual Session of the Commission
4. 3rd Session of the BBNJ Conference
H. Advisory Group Report and Recommendations
1. AP
2. REAC
3. SSC
I. Standing Committee Report and Recommendations
J. Public Comment
K. Council Discussion and Action
12. Protected Species
A. Northwest Hawaiian Islands Green Turtle Research Update
B. False Killer Whale Abundance Estimates
C. Updates on ESA and MMPA Actions
1. Status of ESA Consultations for the Hawaii Deep-Set Longline, American Samoa Longline, and Bottomfish Fisheries
2. Southern Exclusion Zone Potential Reopening Date
3. Insular False Killer Whale Recovery Plan
4. Status of Recovery Plan Implementation for Pacific Green Turtle Populations
D. Advisory Group Report and Recommendations
1. AP
2. REAC
3. SSC
E. Public Comment
F. Council Discussion and Action
13. Program Planning and Research
A. Legislative Report
B. Report on the WPSAR of the Territorial Bottomfish Benchmark Stock Assessment
C. Peer-Reviewed Benchmark Stock Assessment of the Bottomfish Management Unit Species Complex in American Samoa, Guam and CNMI
D. Report on the NS1 Subgroup on Carry-Over and Phase-Ins
E. Report on the CCC Habitat Working Group Workshop
F. Pacific Insular Fisheries Monitoring and Assessment Planning Summit
G. Report to Congress on Section 201 of Modernizing Recreational Fisheries Act
H. Updates to the Spatial Management Workshop Planning
I. Report on the Annual Climate Change Collaborative Meeting
J. OceanObs 19
K. First Stewards
L. Deep Sea Mining Watch and Mining Expansion
M. Regional, National, & International Outreach & Education
N. Advisory Group Report and Recommendations
1. REAC
2. AP
3. SSC
O. Public Comment
P. Council Discussion and Action

Thursday, October 24, 2019, 8:30 a.m. to 12 p.m.

14. Mariana Archipelago
A. Guam
1. Isla Informe
a. Report on Data Collection Improvement Efforts from PIFMAPS
2. Legislative Report
a. SCUBA ban bill
b. Fishing License Update
3. Enforcement Issues
4. Community Activities and Issues
a. Update on Marine Conservation Plan (MCP) Review
5. Guam Reef Fish Stock Assessment
6. Education and Outreach Initiatives
a. High School Summer Course Recap
b. Guam Fisherman Cooperative Association International Derby
B. CNMI
1. Arongol Falú
a. Report on Data Collection Improvement Efforts from PIFMAPS
2. Legislative Report
a. Surround net bill
b. Sunscreen bill
c. Minimum size bill
3. Enforcement Issues
4. Community Activities and Issues
a. Update on MCP Review
b. Garapan Fishing Base Update
c. Bottomfish Training Project
d. Mandatory Data Regulations Update
5. Education and Outreach Initiatives
a. Fishing Tournaments and Derbies
b. High School Summer Course Recap
C. Advisory Group Reports and Recommendations
1. Mariana Archipelago Fishery Ecosystem Plan AP
2. REAC
a. Guam REAC
b. CNMI REAC
3. SSC
D. Public Comment
E. Council Discussion and Action
15. Hawaii Archipelago & Pacific Remote Island Areas
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Ocean Resource Management of Hawaii
E. Review of the Terms of Reference for the Main Hawaiian Islands *Aprion virescens* (uku) Benchmark Stock Assessment
F. Updates on the Hawaii BioSampling Project
G. Review of Hawaii Small-Boat Fishery Performance under the Fishery Ecosystem Plans
G. Education and Outreach Initiatives
H. Advisory Group Report and Recommendations
1. Hawaii Archipelago Fishery Ecosystem Plan AP

2. Guam REAC
3. CNMI REAC
4. SSC
I. Public Comment
J. Council Discussion and Action
16. Administrative Matters
A. Ethics Training
B. Financial Reports
C. Administrative Reports
D. Statement Organization Practices and Procedures
E. Policy on Indirect Cost
F. CCC—Council Member Ongoing Development
G. Geographic Strategic Plan
H. Council Family Changes
I. Meetings and Workshops
J. Standing Committee Report and Recommendations
K. Public Comment
L. Council Discussion and Action
17. Election of Officers
18. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 180th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: October 3, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–21901 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX015

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Massachusetts Division of Marine Fisheries and the University of Massachusetts, Dartmouth, School for Marine Science and Technology contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow four charter/party vessels to collect sub-legal Atlantic cod. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before October 23, 2019.

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

- *Email: NMFS.GAR.EFP@NOAA.gov.* Include in the subject line ''DMF/SMAST cod study EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''DMF/SMAST cod study EFP.''

FOR FURTHER INFORMATION CONTACT: Maria Vasta, Fishery Management Specialist, 978–281–9196.

SUPPLEMENTARY INFORMATION:

The Massachusetts Division of Marine Fisheries (DMF) and the University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST) submitted a complete application for an Exempted Fishing Permit (EFP) on August 29, 2019, to conduct a study of Atlantic cod on and around Cox Ledge in southern New England. Data collected through this EFP would help scientists better characterize spawning seasons, sex ratios, demographics, genetics, and growth rates of cod around the Deepwater Wind Lease Area. The EFP would exempt four charter/party vessels from the following Federal regulations, for sampling purposes only:

1. Recreational minimum fish size limit for Atlantic cod specified at 50 CFR 648.89(b); and

2. Recreational Atlantic cod possession limit specified at § 648.89(c).

Researchers from DMF and/or SMAST would accompany the participating vessels on approximately 24 for-hire recreational fishing trips during November 2019–August 2021. During each sampling trip, customers would capture Atlantic cod (and other species) using standard recreational rod and reel gear. Biological samples would be collected from legal (greater than or equal to 21 inches) cod that are retained by customers. Sub-legal (less than 21 inches) cod would also be temporarily retained for tagging or retained for biological sampling.

Once on board, the physical condition of each sub-legal cod would be assessed. Sub-legal cod that are expected to survive would be temporarily retained, measured, tagged with conventional t-bar tags, and returned to the ocean. Sub-legal cod that are not expected to survive (*e.g.,* severe barotrauma, major injuries) would be retained for biological sampling. Biological samples would include length measurements, otoliths, fin clips, and tissue samples.

Approximately 240 sub-legal cod (10 individuals per trip) would be tagged and approximately 120–240 sub-legal cod (5–10 individuals per trip) would be retained for biological sampling as part of this research. DMF and/or SMAST personnel would be on board the vessels directing sampling activities during all trips taken under this EFP, and exemptions would only apply to fish being collected for the research. Charter/party customers would not retain undersize cod.

If approved, DMF or SMAST may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: October 3, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–21917 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV095

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Groundfish Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, October 30, 2019 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; phone: (603) 431–8000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Committee and Advisory Panel will discuss Framework Adjustment 59/specifications in particular the development of the draft alternatives including updates to annual catch limits for FY2020–FY2022: Specifications for fifteen groundfish stocks, total allowable catches for US/CA management units of Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder stock, sub-annual catch limits for Atlantic sea scallop, small-mesh multispecies, and herring fisheries, revisions/additions to commercial/recreational allocations, and removal of allocation to the Closed Area I Haddock Hook Gear Special Access Program. The group will also discuss Amendment 23/Groundfish Monitoring and receive an update on progress on the draft Environmental Impact Statement (DEIS). Other business will be discussed as necessary.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 3, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–21897 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG908

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the King Pile Markers Project on the Columbia River

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Army Corps of Engineers, Portland District (Corps) to incidentally harass, by Level A and Level B harassment only, marine mammals during the King Pile Markers Project on the Columbia River in Washington and Oregon.

DATES: This Authorization is effective from October 1, 2020 through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 11, 2019, NMFS received a request from the Corps for an IHA to take marine mammals incidental to pile driving associated with the replacement of king pile markers at numerous dike locations in the lower Columbia River system. The king pile markers are located in Oregon and Washington between river miles (RM) 41 and 137. The application was deemed adequate and complete on August 2, 2019. The Corps' request is for take of small numbers of harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*),

and California sea lion (*Zalophus californianus*) that may occur in the vicinity of the project by Level A and Level B harassment. Neither the Corps nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Planned Activity

Overview

The Corps is replacing up to 68 king pile markers at 68 pile dike sites along the lower Columbia River between river miles (RM) 41 and 137. There are a total of 256 pile dikes, in the existing dike system. The king piles that require replacement are not functioning as intended. They were designed to aid navigation by helping mariners avoid pile dikes during high water. Many existing king piles are either missing completely, damaged, or degraded to a point where they no longer provide a visual identifier. This lack of visibility poses a safety concern to both recreational and commercial boaters on the river. Replacement of the king piles will improve visibility of pile dikes and improve safety for Columbia River traffic. Impact and vibratory pile installation would introduce underwater sounds at levels that may result in take, by Level B harassment, of marine mammals in the lower Columbia River. Pile installation is expected to occur for up to 61 days and take place in October and November of 2020. As a contingency, the IHA is effective for a period of one year, from October 1, 2020 through September 30, 2021.

A detailed description of the planned King Pile Project is provided in the **Federal Register** notice for the proposed IHA (84 FR 44866; August 27, 2019). Since that time, no changes have been made to the planned project activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

We published a notice of receipt of the Corps' application and proposed IHA in the **Federal Register** on August 27, 2019 (84 FR 44866). That notice described, in detail, the Corps' activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission).

Comment: The Commission recommended that NMFS authorize 52 Level B harassment takes and 1 Level A harassment take of harbor seals and 27 Level B harassment takes of Steller sea lions for each of the 68 piles to be driven. The Commission also recommended that take should be calculated based on the number of piles driven instead of the number of working days.

Response: For harbor seals, NMFS has accepted the Commission's recommendation to calculate take based on the total number of piles instead of the total number of driving days as up to nine piles could be driven in single day. The Commission noted that there are a number of harbor seal haulouts located along the section of the Columbia River where king piles will be installed (Jeffries *et al.* 2000). However, this data is 20 years old, and biologists with the Corps indicated there were not aware of large harbor seal haul-outs in close proximity to any of the king pile locations. NMFS has increased the take of harbor seals from three per day to 10 per pile based on local anecdotal evidence included in the Port of Kalama IHA application for the Kalama Manufacturing and Marine Export Facility (81 FR 89436; December 12, 2016). Since the anecdotal evidence pertains to a single fixed location, without an associated temporal component. NMFS calculated take based on the number of piles, instead of the number of days. It is important to note that driving times are relatively short at each king pile location and will require no more than 1 hour of impact and 30 minutes of vibratory driving. NMFS is also authorizing Level A take of 10 harbor seals as it is possible during impact pile driving that some small number of individuals could enter the permanent threshold shift (PTS) zone and stay for a sufficient duration to be taken before being detected by observers. Of the haulouts cited by Jeffries *et al.* (2000) only 5 were located in the project area and these were described as low use. A total of 10 king pile installation locations are located within five miles of these haulouts.

In the proposed rule, NMFS based Level B take of Steller sea lions on observations at one of three tailtraces at Bonneville Dam. NMFS multiplied the number (56) by 3 to account for all the tailtraces for each driving day in the proposed IHA. NMFS understands that many of these observations are likely repeated sightings of the same animal and acknowledges that this take estimate is likely overestimated. A number of these sea lions were ''branded'' and could be individually identified. Some of these identified animals were observed at the dam over multiple days. NMFS acknowledges that the number of sea lions swimming up and down the Columbia River, passing king pile markers along the way, is far less than the number observed at the dam. Therefore, NMFS will assume that 56 (the maximum number seen at where observations were conducted at the tailtrace, instead of multiplying by 3) is the total number of Steller sea lions could be taken per day resulting in 3,416 takes by Level B harassment. The take estimate for California sea lions remains unchanged at 9 per day for a total of 549 takes by Level B harassment.

Comment: If NMFS chooses to authorize 56 Level B harassment takes of Steller sea lion per day, the Commission recommends that, at a minimum, NMFS authorize the same number of Level B harassment takes of harbor seals as Steller sea lions and include 1 Level A harassment take per pile of harbor seals.

Response: NMFS explained the reasoning behind the revised estimated take numbers for harbor seals and Steller sea lions in the previous response. NMFS does agree that that authorizing limited take of harbor seals by Level A harassment is prudent and has included this as part of the final authorization. The PTS isopleth is 56.9 meters (m) for harbor seals during impact pile driving so it is conceivable that a harbor seal could enter the Level A harassment zone before being detected resulting in multiple shutdowns which could delay the project, however, the small size of the zone and the likelihood of some degree of aversion make it unlikely that this would happen often.

Comment: The Commission recommended that NMFS obtain more recent pinniped haul-out count data from Washington Department of Fish and Wildlife and the Oregon Department of Fish and Wildlife before processing any additional authorizations for activities occurring in the Columbia River.

Response: When NMFS receives another application for an IHA at a location on the Columbia River these agencies will be contacted.

Comment: The Commission recommended that NMFS conduct a more thorough review of the applications and **Federal Register** notices to ensure accuracy, completeness, and consistency and to ensure that they are based on best available science, prior to submitting them to the **Federal Register** for public comment.

Response: NMFS thanks the Commission for its recommendation. NMFS makes every effort to read the notices thoroughly prior to publication and will continue this effort to publish

the best possible product for public comment using the best available science

Comment: The Commission recommended that NMFS conduct a more thorough review of final incidental harassment authorizations and letters of authorization to ensure accuracy and completeness and consistency with the information stipulated in the **Federal Register** notice for final issuance.

Response: NMFS thanks the Commission for its concerns regarding the IHA process and will make a concerted effort to ensure that language in the final IHA is in agreement with text in the **Federal Register** notice for final issuance.

Comment: The Commission recommended that NMFS refrain from using the proposed renewal process for the Corps' authorization. The renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts on marine mammals and that require the least complex analyses. If NMFS elects to use the renewal process frequently or for authorizations that require a more complex review or for which much new information has been generated the Commission recommended that NMFS provide the Commission and other reviewers the full 30-day comment period as set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: We appreciate the Commission's input and direct the reader to our recent response to the identical comment, which can be found at 84 FR 52464 (October 2, 2019), pg. 52466.

Comment: The Commission recommended that, for all relevant incidental take authorizations, NMFS refrain from using a source level reduction factor for sound attenuation device implementation during impact pile driving, including the 24-in steel piles proposed for use by USACE, until such time that it consults with Caltrans regarding the appropriate source level reduction factor to use to minimize far-field effects on marine mammals.

Response: We direct the reader to our recent response to the nearly identical comment, which can be found at 84 FR 45983 (September 3, 2019), pg. 45985. NMFS will evaluate the appropriateness of using a certain source level reduction factor for sound attenuation device implementation during impact pile driving for all relevant incidental take authorizations when more data become available. Caltrans and other entities that have pertinent data may be contacted as necessary.

Changes From the Proposed IHA to Final IHA

The project has been delayed by one year due to contracting issues. Therefore, construction activities will not begin until October 1, 2020. Therefore, NMFS has revised the effective dates of the IHA from October 1, 2020 through September 30, 2021 to reflect this change.

As described in the **Federal Register** notice for the proposed IHA (84 FR 44866; August 27, 2019), NMFS did not propose take by Level A harassment. The permanent threshold shift (PTS) isopleth is 56.9 m for harbor seal for an hour of impact pile driving. As such, it is possible that during the course of the activities some small number of harbor seals could enter the Level A harassment zone and stay for a sufficient duration to be taken before the Corps detects them and is able to shutdown. Therefore, in consideration of the recommendation from the Commission, NMFS is authorizing 10 instances of take of harbor seal by Level A harassment. NMFS has also revised Level B harassment takes for harbor seals based on the number of piles installed instead of the number of pile driving days. These changes are described in the ''Estimated Take'' section.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all marine mammal species with expected potential for occurrence in the lower Columbia River and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's 2018 U.S. Pacific Marine Mammal SARs (Carretta *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019).

TABLE 1—MARINE MAMMAL SPECIES LIKELY TO BE IN LOWER COLUMBIA RIVER NEAR KING PILE MARKER SITES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S. Stock	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320

TABLE 1—MARINE MAMMAL SPECIES LIKELY TO BE IN LOWER COLUMBIA RIVER NEAR KING PILE MARKER SITES—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-, -, N	41,638 (See SAR, 41,638, 2015).	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Oregon and Washington Coast.	-, -, N	UNK (UNK, UNK, 1999)	UND	10.6

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the planned survey areas are included in Table 1. All three species (with three managed stocks) described below co-occur temporally and spatially co-occur with the planned activity to the degree that take is reasonably likely to occur, and we have authorized it.

A detailed description of the of the species likely to be affected by the Corps' project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, were provided in the **Federal Register** notice for the proposed IHA (84 FR 44866; August 27, 2019). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving. The effects of underwater noise from the Corps' planned activities have the potential to result in Level A and Level B harassment of marine mammals in the vicinity of the action area. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. It is likely that the pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area as well as minor PTS in a limited number of harbor seal. The **Federal Register** notice for the proposed IHA (84 FR 44866; August 27, 2019) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here.

Anticipated Effects on Marine Mammal Habitat

The main impact issue associated with the planned activity would be temporarily elevated sound levels and the associated direct effects on marine mammals. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near where the piles are installed. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (84 FR 44866; August 27, 2019).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to the Corps' pile driving activities could occur as a result of Level A and B harassment. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which

exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

The Corps' planned activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Corp's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) source.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PTS

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10} (R_1/R_2)$, where:

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled sound pressure Level from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. Pile driving may be done with

either vibratory or impact hammer, with vibratory driving being the preferred method. Due to anticipated enrockment surrounding existing piles, however, use of impact hammers may be required.

Estimated in-water sound levels anticipated from vibratory installation and impact hammer installation of steel pipe piles are summarized in Table 3. Sound pressure levels for impact driving of 24-in steel piles were taken from Caltrans (2015). The source levels (SLs) in the table below include a 7 dB reduction for impact driving due to attenuation associated with the use of bubble curtains. Vibratory driving source levels for 24-in steel piles came from the United States Navy (2015). Due to the short operating window (61 days), and concerns about possible delays due to bad weather, the Corps does not propose to use bubble curtains during vibratory driving. This should expedite pile installation at king pile locations where use of vibratory hammers is employed.

TABLE 3—ESTIMATED UNDERWATER SOURCE LEVELS ASSOCIATED WITH VIBRATORY PILE DRIVING AND IMPACT HAMMER PILE DRIVING

Pile type	SPL (single strike)		
24-Inch Steel Pipe Piles w/impact hammer (attenuated) [1]	200 dB_{PEAK}	187 dB_{RMS}	171 dB_{SEL}.
24-Inch Steel Pipe Piles w/vibratory (unattenuated) [2]	Not Available	161 dB_{RMS}	Not Available.

[1] From Caltrans (2015) Acoustic data from CalTrans 2015 Table I.2–1. Summary of Near-Source (10-Meter) Unattenuated Sound Pressure Levels for In-Water Pile Driving Using an Impact Hammer: 0.61-meter (24-inch) steel pipe pile in water ~15 meters deep, w/7dB reduction for use of attenuation (as per NMFS 2019 pers. Comm).

[2] From United States Navy. 2015. Proxy source sound levels and potential bubble curtain attenuation for acoustic modeling of nearshore marine pile driving at Navy installations in Puget Sound. Prepared by Michael Slater, Naval Surface Warfare Center, Carderock Division, and Sharon Rainsberry, Naval Facilities Engineering Command Northwest. Revised January 2015. Table 2–2.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting Level A harassment isopleths are reported below in Tables 4 and 5 respectively. Note that while up to 9 piles could be installed in a single day, they would be driven at different locations and the ensonified areas associated with each location would not overlap. For the purpose of calculating PTS isopleths using the User Spreadsheet, it is assumed that a single pile would be driven per day at a single location (*i.e.,* the zones for each pile are calculated independently) since there will be no overlap of disturbance zones from adjacent king pile installation sites. The Level B harassment isopleths were calculated using the practical spreading loss model. Underwater noise will fall below the behavioral effects threshold of 160 dB for impact driving and 120 dB rms for vibratory driving at the distances shown in Table 5.

TABLE 4—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS

Inputs	24-in Steel impact installation	24-in Steel vibratory installation
Spreadsheet Tab Used	(E.1) Impact Pile Driving	(A.1) Vibratory Pile Driving
Source Level (Single Strike/shot SEL)	171 dB SEL/200 dB Peak	161 dB RMS
Weighting Factor Adjustment (kHz)	2	2.5
Number of strikes per pile	550.	
Number of piles per day	1	1
Duration to install single pile (minutes)	60	30
Propagation (xLogR)	15	15
Distance of source level measurement (meters) +	10	10

TABLE 5—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Noise generation type	Level A harassment PTS isopleth (meters)		Level B harassment isopleth (meters)
	Phocid pinniped	Otariid pinniped	All groups
24″ Steel Pipe Impact attenuated	56.9	4.1	631
24″ Steel Pipe Vibratory unattenuated	2.6	0.2	5,412

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Pinnipeds are typically concentrated at haul out sites (*e.g.,* the MCR South jetty) and feeding areas where there are concentrations of salmon (*e.g.,* Bonneville Dam). Individual animals that occur near king pile locations are likely to be in transit between these two prominent sites. Pinnipeds that travel to Bonneville Dam consistently forage in all three of the dam's tailraces. A tailrace is the flume, or water channel leading away from the dam. Pinniped presence at the dam during the spring months has been recorded since 2002 and during fall/winter months starting in 2011 to assess the impact of predation on adult salmonids and other fish (Tidwell *et al.* 2019).

Estimated take in the proposed IHA was calculated using the maximum daily number of individuals observed at Bonneville dam (Tidwell *et al.* 2019), multiplied by the total number of work days (61). The maximum daily number of animals observed at the dam between August 15 and December 31 was used for both California sea lions (3 in 2015 and 2017) and Steller sea lions (56 in 2016). No harbor seals were observed during the fall/winter sampling period. However, only one of the three tailraces was monitored during the fall/winter months and only when sea lion abundance was ≥20 animals. Therefore, NMFS multiplied the number of observed California and Steller sea lions by three to account for potential animals at all of the tailraces. Since there were no harbor seals observed during the fall/winter period, NMFS used the maximum daily observation from the spring observation period (3 in 2006) during which all three tailraces were monitored.

For the final IHA, NMFS revised take numbers of Steller sea lions and harbor seals. For Steller sea lions NMFS reduced take by utilizing the maximum of observations (56) at only one tailrace instead of multiplying by 3 as was done in the proposed IHA because many of these observations at the dam are likely repeated sightings of the same animal, some of whom are known to remain at the dam for extended periods. NMFS feels this reduced take estimate is more appropriate given that the initial estimate in the proposed IHA was overly conservative. Therefore, NMFS will assume that 56 is the total number of Steller sea lions could be taken per day resulting in 3,416 takes by Level B harassment. Take of California sea lions remains unchanged at 9 takes per day.

Harbor seal takes were increased to 10 per pile based on anecdotal evidence reported by the Port of Kalama in their IHA application for the. Kalama Manufacturing and Marine Export Facility (81 FR 89436; December 12, 2016). NMFS elected to calculate seal takes based on the number of animals taken per pile instead of per day. This was done since the anecdotal data represents a single location without any temporal component on which a daily take rate could be derived. NMFS authorized take of 10 harbor seals by Level A harassment since it is possible during impact pile driving that a harbor seal could enter the Level A harassment zone before being detected by observers.

Table 6 depicts the stocks NMFS proposes to authorize for take, the numbers authorized, and the percentage of the stock taken.

TABLE 6—LEVEL B HARASSMENT TAKE ESTIMATES FOR THE KING PILE MARKER PROJECT

Species	Level A take	Level B take	Stock abundance	Percentage of stock taken
California Sea Lion	.....	549	296,750	0.2
Stellar Sea Lion	.....	3,416	41,638	8.2
Harbor Seal	10	610	*24,732	2.5

*There is no current estimate of abundance available for this stock since most recent abundance estimate is >8 years old. Abundance value provided represents best available information from 1999.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, the Corps must employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to

the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);

- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation will shut down immediately when the animals are sighted;
- If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

Establishment of Shutdown and Level A Harassment Zones—For all pile driving activities, the Corps shall establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the type of driving activity and by marine mammal hearing group. Shutdown zones during impact and vibratory driving will be 10 m for all species. Planned shutdown zones are larger than the calculated Level A harassment isopleths shown in Table 5 for Steller sea lions and California sea lions. The Level A harassment zone is larger for phocids than for other authorized species. Seals could appear unexpectedly in this zone before being observed by protected species observers (PSOs). Therefore, the area between 10 m and 60 m is established as a Level A harassment zone for harbor seal and must be monitored as such by PSOs. The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting Section) will ensure that the entirety of all shutdown zones are visible during pile installation.

Establishment of Monitoring Zones for Level B Harassment—The Corps will establish monitoring zones, based on the Level B harassment isopleths which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. In the unlikely event that a cetacean enters the Level B harassment zones work will stop immediately until the animal either departs the zone or is undetected for 15 minutes. Distances to the Level B harassment zones are depicted in Table 5. In addition, the Corps will establish minimum allowable work distances between adjacent work platforms, based on monitoring zone isopleths, to ensure that there is no overlap of behavioral harassment zones.

Sound Attenuation—Bubble curtains will be used during any impact pile driving of piles located in water greater than 2 ft. in depth. The bubble curtain will be operated in a manner consistent with the following performance standards:

a. The bubble curtain will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column;

b. The lowest bubble ring will be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact; and

c. Air flow to the bubblers must be balanced around the circumference of the pile.

Soft Start—The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start is not required during vibratory pile driving activities. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. If a marine mammal is present within the shutdown zone, soft start will be delayed until the animal is observed leaving the shutdown zone. Soft start will begin only after the PSO has determined, through sighting, that the animal has moved outside the shutdown zone or 15 minutes have passed without being seen in the zone. If a marine mammal is present in the Level B harassment zone, soft start may begin and a Level B take will be recorded for authorized species. Soft start up may occur whether animals enter the Level B zone from the shutdown zone or from outside the monitoring area.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, pile driving activities may begin and take by Level B will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

Based on our evaluation of the applicant's required measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

There will be at least one PSO employed at all king pile installation locations during all pile driving activities. PSO will not perform duties for more than 12 hours in a 24-hour period. The PSO would be positioned close to pile driving activities at the best practical vantage point.

As part of monitoring, PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, PSOs will monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Independent observers (*i.e.,* not construction personnel);
- Observers must have their CVs/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute education or training for experience;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Due to the large size of the Level B harassment zones at each pile, it is impracticable for the PSO to consistently view the entire harassment area. Therefore, takes by Level B harassment will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible. Distances to the Level B harassment zones are depicted in Table 5.

Reporting

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving activities. This reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations;
- An estimate of total take based on proportion of the monitoring zone that was observed;
- Other human activity in the area; and
- Marine mammal PSO observational datasheets or raw data.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHAs (if issued), such as an injury, serious injury or mortality, the Corps would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the Corps to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Corps would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the Corps discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the Corps would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Corps to determine whether modifications in the activities are appropriate.

In the event that the Corps discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in these IHAs (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Corps would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, within 24 hours of the discovery. The Corps would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 6, given that NMFS expects the anticipated effects of the planned pile driving to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of the Corps' planned activity. As stated in the planned mitigation section, shutdown zones will be established and monitored that equal or exceed calculated Level A harassment isopleths during all pile driving activities.

Behavioral responses of marine mammals to pile driving during the King Pile Marker Project are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities (less than 90 minutes of combined daily impact and vibratory driving at 68 separate locations over 61 days, any harassment would be likely be intermittent and temporary.

In addition, for all species there are no known biologically important areas (BIAs) within the lower Columbia River and no ESA-designated marine mammal critical habitat. The lower Columbia River represents a very small portion of the total habitat available to the pinniped species for which NMFS is proposing to authorize take. More generally, there are no known calving or rookery grounds within the project area, the project area represents a small portion of available foraging habitat, and the duration of noise-producing activities relatively is short, meaning impacts on marine mammal feeding for all species should be minimal.

Any impacts on marine mammal prey that would occur during the Corps' planned activity would have at most short-terms effects on foraging of individual marine mammals while transiting between the South Jetty at the Mouth of the Columbia River and Bonneville Dam located 146 miles upstream. Better feeding opportunities exist at these two locations which is why pinnipeds tend to congregate in these areas. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial, and these insubstantial effects would therefore be unlikely to cause substantial effects on individual marine mammals or the populations of marine mammals as a whole.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The Corps would implement mitigation measures including bubble curtains and soft-starts during impact pile driving as well as shutdown zones that exceed Level A harassment zones for authorized species, such that Level A harassment is neither anticipated nor authorized;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- There are no BIAs or other known areas of particular biological importance to any of the affected stocks impacted by the activity within the Columbia River estuary or lower Columbia River; and
- The project area represents a very small portion of the available foraging area for all marine mammal species and anticipated habitat impacts are minimal.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on

all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 6 in the *Marine Mammal Occurrence and Take Calculation and Estimation* section presents the number of animals that could be exposed to received noise levels that may result in take by Level B harassment from the Corps' planned activities. Our analysis shows that less than 9 percent of the Steller sea lion stock could be taken. Less than three percent of harbor seal and less than one percent of California sea lion are expected to be taken. Given that numbers for Steller sea lions were derived from limited observation at Bonneville Dam, it is likely that many of these takes will be repeated takes of the same animals over multiple days. As such, the take estimate serves as a good estimate of instances of take, but is likely an overestimate of individuals taken, so actual percentage of stocks taken would be even lower. We also emphasize the fact that the lower Columbia River represents a very small portion of the stock's large range, which extends from southeast Alaska to southern California. It is unlikely that one quarter of the entire stock would travel in excess of 137 miles upstream to forage at Bonneville Dam on the Columbia River.

Based on the analysis contained herein of the planned activity (including required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Corps for the harassment of small numbers of marine mammals incidental to the King Marker Project on the Columbia River provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 30, 2019.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–21905 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV096

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings of the South Atlantic Fishery Management Council's (Council) Advisory Panels (AP) via webinar.

SUMMARY: The Council will hold a joint meeting of the following Advisory panels: Coral, Dolphin Wahoo, Mackerel Cobia, Shrimp, and Spiny Lobster via webinar followed by an independent meeting of the advisory panels via webinar.

DATES: The meetings will take place October 29, 2019, from 1 p.m. to 4 p.m. The established times may be adjusted as necessary to accommodate the timely completion of discussion. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The meetings are open to the public. Registration for the webinars is required. See **SUPLEMENTARY INFORMATION.**

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29406.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The advisory panels will meet jointly via webinar to receive a presentation by the Florida Keys National Marine Sanctuary (FKNMS) on its current Marine Zoning and Regulatory Review *https://floridakeys.noaa.gov/review/welcome.html* with a focus on possible implications to federally-managed fisheries. The AP members will have the opportunity for questions with FKNMS staff.

Following the presentation and questions, the advisory panels will meet independently via webinar to discuss the information received during the presentation and provide recommendations for Council consideration as appropriate.

The meetings are open to the public and will be available via webinar as they occur. Registration is required. Webinar registration information, a public comment form, and other meeting materials will be posted to the Council's website at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/* as it becomes available.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 3, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–21898 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV097

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, October 22, 2019 at 1:30 p.m.

ADDRESSES: The meeting will be held at the New Bedford Harbor Hotel, 222 Union Street, New Bedford, MA 02740; phone: (508) 999–1292.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Skate Committee will discuss Amendment 5/Limited Access to the skate fishery and review Plan Development Team (PDT) analyses to date; continued discussion on the structure of a limited access program for the skate bait and wing fisheries including draft alternatives. Other business may be discussed as necessary.

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 these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 3, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–21899 Filed 10–7–19; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER FINANCIAL PROTECTION BUREAU

Consumer Advisory Board Meetings

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Wednesday, October 23, 2019, from approximately 12:30 p.m. to 4:15 p.m. eastern daylight time and Thursday, October 24, 2019, from approximately 10:00 a.m. to 3:15 p.m.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils Office, External Affairs, at 202–435–7884, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Board states that: The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The Board will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration.

Individuals who wish to join the Board must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/fall-2019-advisory-committee-meetings* by noon, October 22, 2019. Members of the public must RSVP by the due date.

III. Availability

The Board's agenda will be made available to the public on Tuesday, October 22, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the

meeting on the Bureau's website *consumerfinance.gov.*

Dated: September 25, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21368 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Wednesday, October 23, 2019, from approximately 12:30 p.m. to 4:15 p.m. eastern daylight time and Thursday, October 24, 2019, from approximately 10:00 a.m. to 3:15 p.m.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Council will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to join the Council must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/fall-2019-advisory-committee-meetings* by noon, October 22, 2019. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Tuesday, October 22, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: September 25, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21369 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Academic Research Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Academic Research Council (ARC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Friday, October 25, 2019, from approximately 10:15 a.m. to 4:00 p.m. eastern standard time.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, at 202–435–7884, or *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the of the ARC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Academic Research Council under agency authority. Section 3 of the ARC Charter states: The committee will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions.

II. Agenda

The ARC will discuss methodology, direction for consumer finance research, and broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance

of the meeting. The comments will be provided to the ARC members for consideration. Individuals who wish to join the ARC must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/fall-2019-academic-research-committee-meetings* by noon, October 24, 2019. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Thursday, October 24, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: September 25, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21374 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Wednesday, October 23, 2019, from approximately 12:30 p.m. to 4:15 p.m. eastern daylight time and Thursday, October 24, 2019, from approximately 10:00 a.m. to 3:15 p.m.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Council will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration. Individuals who wish to join the CUAC must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/fall-2019-advisory-committee-meetings* by noon, October 22, 2019. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Tuesday, October 22, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: September 25, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21371 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0041]

Collection of Information; Proposed Extension of Approval; Comment Request—Publicly Available Consumer Product Safety Information Database

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of a collection of information for the Publicly Available Consumer Product Safety Information Database. The CPSC will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by December 9, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0041, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://*

www.regulations.gov. Do not submit electronically any confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to provide such information, please submit it in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2010–0041, into the ''Search'' box, and follow the prompts. A copy of the supporting statement will be made available under Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of the supporting statement, contact: Bretford Griffin, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) added section 6A to the Consumer Product Safety Act (CPSA), which requires the CPSC to establish and maintain a publicly available, searchable database (Database) on the safety of consumer products and other products or substances regulated by the CPSC. Among other things, section 6A of the CPSA requires the CPSC to collect reports of harm from the public for potential publication in the publicly available Database, and to collect and publish comments from manufacturers about reports of harm.

The CPSC announced that a proposed collection of information in conjunction with the Database, called the Publicly Available Consumer Product Safety Information Database, had been submitted to OMB for review and clearance under 44 U.S.C. 3501–3520 in a proposed rule published on May 24, 2010 (75 FR 29156). The CPSC issued a final rule on the Database on December 9, 2010 (75 FR 76832). The final rule interprets various statutory requirements in section 6A of the CPSA pertaining to the information to be included in the Database; and the final rule also establishes provisions regarding submitting reports of harm; providing notice of reports of harm to manufacturers; publishing reports of harm and manufacturer comments in the Database; and dealing with confidential and materially inaccurate information.

OMB approved the collection of information for the Database under control number 3041–0146. OMB's most recent extension of approval on January 31, 2017, will expire on January 31, 2020. Accordingly, the CPSC now proposes to request an extension of approval of this collection of information.

B. Information Collected Through the Database

The primary purpose of this information collection is to populate the publicly searchable Database of consumer product safety information mandated by section 6A of the CPSA. The Database information collection has four components: reports of harm, manufacturer comments, branding information, and the Small Batch Manufacturer Registry (SBMR).

Reports of Harm: Reports of harm communicate information regarding an injury, illness, or death, or any risk (as determined by CPSC) of injury, illness, or death, relating to the use of a consumer product. Reports can be submitted to the CPSC by consumers; local, state, or federal government agencies; health care professionals; child service providers; public safety entities; and others. Reports may be submitted in one of three ways: via the CPSC website (*www.SaferProducts.gov*), by telephone via a CPSC call center, or by email, fax, or mail using the incident report form (available for download or printing via the CPSC website). Reports may also originate as a free-form letter or email. Submitters must consent to including their report of harm in the publicly searchable Database.

Manufacturer Comments: A manufacturer or private labeler may submit a comment related to a report of harm after the CPSC transmits the report to the manufacturer or private labeler identified in the report. Manufacturer comments may be submitted through the business portal, by email, mail, or fax. The business portal is a feature of the Database that allows manufacturers who register on the business portal to receive reports of harm and comment on such reports through the business portal. Use of the business portal expedites the receipt of reports of harm and business response times.

A manufacturer may request that the CPSC designate information in a report of harm as confidential. Such a request may be made using the business portal, by email, by mail, or by fax. Additionally, any person or entity reviewing a report of harm or manufacturer comment, either before or after publication in the Database, may request that the report or comment, or portions of the report or comment, be excluded from the Database because it contains materially inaccurate information. Such a request may be made by manufacturers using the business portal, by email, mail or fax, and may be submitted by anyone else by email, mail, or fax.

Branding Information: Using the business portal, registered businesses may voluntarily submit branding information to assist CPSC in correctly and timely routing reports of harm involving their products to them. Brand names may be licensed to another entity for use in labeling consumer products manufactured by that entity. CPSC's understanding of licensing arrangements for consumer products ensures that the correct manufacturer is timely notified regarding a report of harm.

Small Batch Manufacturers Registry: The business portal also contains the SBMR, which is the online mechanism by which ''small batch manufacturers'' (as defined in the CPSA) can identify themselves to obtain relief from certain third party testing requirements for children's products. To register as a small batch manufacturer, a business must attest that the company's income level, and the number of units of the covered product manufactured for which relief is sought, both fall within the statutory limits to receive relief from third party testing.

C. Estimated Burden

1. Estimated Annual Burden for Respondents

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Reports of Harm—submitted through website	5,646	1.07	6,023	12	1,205
Reports of Harm—submitted by phone	1,397	1.02	1,418	10	236
Reports of Harm—submitted by mail, email, fax	349	43.88	15,314	20	5,105

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM—Continued

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Total	7,392		22,755		6,546

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR MANUFACTURER SUBMISSIONS

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Manufacturer Comments—submitted through website	2,311	1.06	2,461	117	4,799
Manufacturer Comments—submitted by mail, email, fax	182	1.90	346	147	848
Requests to Treat Information as Confidential—submitted through website	2	1.00	2	42	1
Requests to Treat Information as Confidential—submitted by mail, email, fax	0	n/a	0	72	0
Requests to Treat Information as Materially Inaccurate—submitted through website	141	1.19	168	165	462
Requests to Treat Information as Materially Inaccurate—submitted by mail, email, fax	25	1.12	28	195	91
Voluntary Brand Identification	932	1.37	1,281	10	214
Small Batch Manufacturer Identification	2,292	1	2,292	10	382
Total	5,885		6,578		6,797

Based on the data set forth in Tables 1 and 2 above, the annual reporting cost is estimated to be $691,884. This estimate is based on the sum of two estimated total figures for reports of harm and manufacturer submissions. The estimated number of respondents and responses are based on the actual responses received in FY 2018. We assume that the number of responses and respondents will be similar in future years.

Reports of Harm: Table 1 sets forth the data used to estimate the burden associated with submitting reports of harm. We had previously estimated the time associated with the electronic and telephone submission of reports of harm at 12 and 10 minutes, respectively; and because we have had no indication that these estimates are not appropriate or accurate, we used those figures for present purposes as well. We estimate that the time associated with a paper or PDF form would be 20 minutes, on average.

To estimate the costs for submitting reports of harm, we multiplied the estimated total burden hours associated with reports of harm (1,205 hours + 236 hours + 5,105 hours = 6,546 hours) by an estimated total compensation for all workers in private industry of $34.05 per hour,[3] which results in an estimated cost of $222,891 (6,546 hours × $34.05 per hour = $222,891).

Manufacturer Submissions: Table 2 sets forth the data used to estimate the burden associated with manufacturers' submissions to the Database. We observed that a large percentage of the general comments come from a few businesses, and we assumed that the experience of a business that submits many comments each year would be different from one that submits only a few. Accordingly, we divided all responding businesses into three groups based on the number of general comments submitted in FY 2018, and then we selected several businesses to contact from each group. The first group contacted consisted of businesses that submitted 50 or more comments in FY 2018, accounting for 31 percent of all general comments received. The second group contacted included businesses that submitted 6 to 49 comments, accounting for 39 percent of all general comments received. The last group contacted included businesses that submitted no more than 5 comments, accounting for 30 percent of all general comments received. We asked each company how long it typically takes to research, compose, and enter a comment or a claim of materially inaccurate information.

To estimate the burden associated with submitting a general comment regarding a report of harm through the business portal, we averaged the burden provided by each company within each group, and then we calculated a weighted average from the three groups, weighting each group by the proportion of comments received from that group. We found that the average time to submit a general comment regarding a report of harm is 117 minutes, based on the data in Table 3 (((15 minutes + 45 minutes + 30 minutes + 15 minutes)/4 companies)*.31 + ((105 minutes + 45 minutes + 150 minutes + 15 minutes)/4 companies)*.39 + ((240 minutes + 60 minutes + 480 minutes)/3 companies)*.30 = 117 minutes).

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE

Group	Company	General Comments
Group 1 (> = 50 comments)	Company A	15 minutes.
	Company B	45 minutes.
	Company C	30 minutes.
	Company D	15 minutes.

[1] Frequency of responses is calculated by dividing the number of responses by the number of respondents.

[2] Numbers have been rounded.

[3] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, Dec 2018 (data extracted on 8/2/2019 from: *http://www.bls.gov/news.release/ecec.t09.htm.*

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE—Continued

Group	Company	General Comments
Group 2 (6–49 comments)	Company A	105 minutes.
	Company B	45 minutes.
	Company C	150 minutes.
	Company D	15 minutes.
Group 3 (> = 5 comments)	Company A	240 minutes.
	Company B	60 minutes.
	Company C	480 minutes.

Registered businesses generally submit comments through our website. Unregistered businesses submit comments by mail, email, or fax. We estimate that submitting comments via mail, email, or fax takes a little longer because often, we must ask businesses to amend their submissions to include the required certifications. Thus, we estimated that, on average, comments submitted by mail, email, or fax take 30 minutes longer than comments submitted through our website (117 minutes + 30 minutes = 147 minutes).

The submission of a claim of materially inaccurate information is a relatively rare event for all respondents, so we averaged all responses together. Eight of the businesses contacted had submitted claims of materially inaccurate information. We found that the average time to submit a claim that a report of harm contains a material inaccuracy is 165 minutes ((30 minutes + 90 minutes + 45 minutes + 90 minutes + 60 minutes + 660 minutes + 45 minutes + 300 minutes)/8 companies = 165 minutes).

Registered businesses generally submit claims through the business portal. Unregistered businesses submit claims by mail, email, or fax. We estimate that submitting claims via mail, email, or fax takes a little longer because often, we must ask businesses to amend their submission to include the required certifications. Thus, we estimated that, on average, claims submitted by mail, email, or fax take 30 minutes longer than those submitted through our website (165 minutes + 30 minutes = 195 minutes).

The submission of a claim of confidential information is a relatively rare event for all respondents, so we averaged all responses together. Five of the businesses contacted had submitted claims of confidential information. We found that the average time to submit a claim that a report of harm contains confidential information is 42 minutes ((45 minutes + 15 minutes + 60 minutes + 30 minutes + 60 minutes)/5 companies = 42 minutes).

Registered businesses generally submit confidential information claims through the business portal. Unregistered businesses submit confidential information claims by mail, email, or fax. We estimate that submitting claims by mail, email, or fax takes a little longer because often, we must ask businesses to amend their submission to include the required certifications. Thus, we estimate that a confidential information claim submitted by mail, email, or fax would take 30 minutes longer than those submitted through our website (42 minutes + 30 minutes = 72 minutes).

For voluntary brand identification, we estimate that a response would take 10 minutes, on average. Most responses consist only of the brand name and a product description. In many cases, a business will submit multiple entries in a brief period of time, and we can see from the date and time stamps on these records that an entry often takes less than 2 minutes. CPSC staff enters the same data in a similar form, based on our own research, and that experience was also factored into our estimate.

For small batch manufacturer identification, we estimate that a response would take 10 minutes, on average. The form consists of three check boxes and the information should be readily accessible to the respondent.

The responses summarized in Table 2 are generally submitted by manufacturers. To avoid underestimating the cost associated with the collection of this data, we assigned the higher hourly wage associated with a manager or professional in goods-producing industries to these tasks. To estimate the cost of manufacturer submissions, we multiplied the estimated total burden hours in Table 2 (6,797 hours), by an estimated total compensation for a manager or professional in goods-producing industries of $69.00 per hour,[4] which results in an estimated cost of $468,993 (6,797 hours × $69.00 per hour = $468,993).

Therefore, the total estimated annual cost to respondents is $691,884 ($222,891 burden for reports of harm + $468,993 burden for manufacturer submissions = $691,884).

2. Estimated Annual Burden on Government

We estimate the annualized cost to the CPSC to be $982,166. This figure is based on the costs for four categories of work for the Database: Reports of Harm, Materially Inaccurate Information Claims, Manufacturer Comments, and Small Batch Identification. Each category is described below. No government cost is associated with voluntary brand identification because this information is entered directly into the Database by the manufacturer with no processing required by the government. The information assists the government in directing reports of harm to the correct manufacturer. We did not attempt to calculate separately the government cost for claims of confidential information because the number of claims is so small. The time to process these claims is included with claims of materially inaccurate information.

Reports of Harm: The Reports of Harm category includes many different tasks. Some costs related to this category are from two data entry contracts. Tasks related to these contracts include clerical coding of the report, such as identifying the type of consumer product reported and the appropriate associated hazard, as well as performing quality control on the data in the report. Contractor A spends an estimated 5,267 hours per year performing these tasks. With an hourly rate of $38.10 for contractor services, the annual cost to the government of contract A is $200,673. Contractor B spends an estimated 2,029 hours per year performing these tasks. With an hourly rate of $41.33 for contractor services, the annual cost to the government of contract B is $83,859.

The Reports of Harm category also includes sending consent requests for

[4] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, December 2018 (data extracted on 09/13/2019 from: *http://www.bls.gov/news.release/ecec.t09.htm.*

reports when necessary, processing that consent when received, determining whether a product is out of CPSC's jurisdiction, and confirming that pictures and attachments do not have any personally identifiable information. The Reports of Harm category also entails notifying manufacturers when one of their products is reported, completing a risk of harm determination form for every report eligible for publication, referring some reports to a Subject Matter Expert (SME) within the CPSC for a determination on whether the reports meet the requirement of having a risk of harm, and determining whether a report meets all the statutory and regulatory requirements for publication. Detailed costs are:

TABLE 4—ESTIMATED COSTS FOR REPORTS OF HARM TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Contract A	5,267	$38.10	$200,673
Contract B	2,029	41.33	83,859
7	200	37.37	7,474
9	300	45.72	13,716
12	5,528	66.31	366,562
13	428	78.84	33,744
14	1,068	93.18	99,516
Total	14,820	.....	825,544

Materially Inaccurate Information (MII) Claims: The MII claims category includes reviewing and responding to claims, participating in meetings where the claims are discussed, and completing a risk of harm determination on reports when a company alleges that a report does not describe a risk of harm.

TABLE 5—ESTIMATED COSTS FOR MII CLAIMS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	275	$66.31	$18,235
13	167	78.84	13,166
14	323	93.18	30,097
15	50	109.60	5,480
SES	50	131.52	6,576
Total	865	.....	73,554.00

Manufacturer Comments: The Comments category includes reviewing and accepting or rejecting comments.

TABLE 6—ESTIMATED COSTS FOR MANUFACTURER COMMENTS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	62	$66.31	$4,111
13	109	78.84	8,594
Total	171	.....	12,705

Small Batch Manufacturer Identification: The Small Batch Manufacturer Identification category includes time spent posting the list of small batch registrations, as well as answering companies' questions on registering as a Small Batch Manufacturer and the implications of small batch registration.

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
15	642	$109.60	$70,363

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK—Continued

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Total	642		70,363

We estimate the annualized cost to the CPSC of $954,531, by adding the four categories of work related to the Database summarized in Tables 4 through 7 (Reports of Harm ($825,544) + MII Claims ($73,554) + Manufacturer Comments ($12,705) + Small Batch Identification ($70,363) = $982,166).

This information collection renewal request is based on an estimated 13,343 burden hours per year for the Database, which represents an increase of 983 hours since this collection of information was last approved by OMB in 2017. The increase in burden is due primarily to the increase in the number of incoming reports of harm, and the increase in the number of claims based on those reports. Comments have also increased significantly, but shifted to the more efficient, online submission. A slight increase in small batch manufacturer activity occurred, as well, which has been rising steadily for years.

D. Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility.
- Whether the estimated burden of the proposed collection of information is accurate.
- Whether the quality, utility, and clarity of the information to be collected could be enhanced.
- Whether the burden imposed by the collection of information could be minimized by using automated, electronic, or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–21944 Filed 10–7–19; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0102]

Collection of Information; Proposed Extension of Approval; Comment Request—Follow-Up Activities for Product-Related Injuries Including NEISS

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval for an information collection to obtain data on consumer product-related injuries, and follow-up activities for product-related injuries. The Office of Management and Budget (OMB) previously approved the collection of information under OMB Control No. 3041–0029. CPSC will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: Submit written or electronic comments on the collection of information by December 9, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0102, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2009–0102, into the ''Search'' box, and follow the prompts. A copy of the supporting statement, ''PRI ICR 2019 60-day'' will be made available under Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the supporting statement contact: Bretford Griffin, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act, 15 U.S.C. 2054(a), requires the CPSC to collect information related to the causes and prevention of death, injury, and illness associated with consumer products. That section also requires the CPSC to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products.

The CPSC obtains information about product-related deaths, injuries, and illnesses from a variety of sources, including newspapers, death certificates, consumer complaints, and medical facilities. In addition, the CPSC receives information through its internet website through forms reporting on product-related injuries or incidents. The CPSC also operates the National Electronic Injury Surveillance System (NEISS), which provides timely data on consumer product-related injuries treated in hospital emergency departments in the United States. The CPSC also uses the NEISS system to collect information on childhood poisonings, in accordance with the

Poison Prevention Packaging Act of 1970.

From these sources, CPSC staff selects cases of interest for further investigation, by contacting persons who witnessed or were injured in incidents involving consumer products. These investigations are conducted on-site (face-to-face), by telephone, or by the internet. On-site investigations are usually made in cases where CPSC staff needs photographs of the incident site, the product involved, or detailed information about the incident. This information can come from face-to-face interviews with persons who were injured or who witnessed the incident, as well as via contact with state and local officials, including police, coroners, and fire investigators, and others with knowledge of the incident.

Through interagency agreements, the CPSC also uses the NEISS system to collect information on injuries for the Centers for Disease Control and Prevention (CDC) under the NEISS All Injury Program (NEISS–AIP). The NEISS–AIP is a sub-sample of approximately two-thirds of the full NEISS sample. In addition to the standard data variables collected on all NEISS injuries, the NEISS–AIP collects additional variables on several studies for CDC (Adverse Drug Events, Assaults, Self-Inflicted Violence, and Work-Related Injuries) and one study on non-crash motor vehicle-related injuries for the National Highway and Transportation Safety Administration (NHTSA). Additional special study variables are collected for CDC in the full NEISS sample for firearm-related injuries.

The current NEISS probability sample was drawn and recruited in 1995–1996 and implemented in 1997. Since then, several of the selected hospitals have stopped participating for reasons such as closures and mergers with other hospitals, and were replaced with other purposively-selected hospitals. While hospital weights are adjusted to account for changes in the population of hospitals over time, the current sample of hospitals participating in NEISS is being reviewed to assess their representativeness. The selection process may be revised in future years in order to strengthen the quality and representativeness of the estimates generated by the NEISS–AIP. CPSC has entered into a contract with Westat to perform an independent statistical assessment of the NEISS and NEISS–AIP samples under CPSC contract 61320619F0134 with a period of performance of September 27, 2019 through September 26, 2020.

OMB previously approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on January 31, 2020. The CPSC now proposes to request an extension of approval of this collection of information.

B. NEISS Estimated Burden

The NEISS system collects information on consumer product-related incidents and other injuries from a statistical sample of 96 hospitals in the United States. Respondents to NEISS include hospitals that directly report information to NEISS, and hospitals that allow access to a CPSC contractor, who collects the data. Collecting emergency department records for review, correcting error messages, among other tasks, takes about 36 minutes per day. Each record takes about 30 seconds to review. Coding and reporting records that involve consumer products or other injuries takes about 2 minutes per record. Coding and reporting additional special study information (Adverse Drug Effects) takes about 2 minutes and 90 seconds per record for other special studies. Respondents also spend about 36 hours per year in related activities (training, evaluations, and communicating with other hospital staff).

In 2018, there were 130 NEISS respondents (total hospitals and CPSC contractors). These NEISS respondents reviewed an estimated 5.53 million emergency department records and reported 727,544 total cases (363,221 consumer product-related injuries for CPSC, and 364,323 other injuries for the NEISS–AIP). The table below lists the number of reported cases, and the number of reported cases with additional special study information.

Total NEISS Cases Reported	727,544
Consumer Product-Related Injuries	363,221
CDC NEISS–AIP	364,323
Special Studies Reported (subset of above)	
Child Poisoning (CPSC)	4,734
Adverse Drug Events (CDC)	36,858
Assaults (CDC)	32,990
Firearm-Related Injuries (CDC)	6,159
Self-Inflicted Violence (CDC)	9,106
Work-Related Injuries (CDC)	38,132
Motor Vehicle Non-Crash Injuries (NHTSA)	12,813

The total burden hours for all NEISS respondents are estimated to be 100,781 for 2018. The average burden hour per respondent is 775 hours. However, the total burden hour on each respondent varies due to differences in size of the hospital (*e.g.,* small rural hospitals versus large metropolitan hospitals). The smallest hospital reported 82 cases with a burden of about 258 hours, while the largest hospital reported 47,801 cases with a burden of about 4,125 hours.

The total cost to NEISS respondents for 2018 was approximately $3,391,000. NEISS respondents enter into contracts with CPSC and are compensated for these costs. The average cost per respondent is estimated to be about $26,000. The average cost per burden hour is estimated to be $33.65 per hour (including wages and overhead). However, the actual cost to each respondent varies, due to the type of respondent (hospital versus CPSC contractor), size of hospital, and regional differences in wages and overhead. Therefore, the actual annual cost for any given respondent may vary between $3,048 at a small rural hospital, and $329,690 at the largest metropolitan hospital.

C. Other Burden Hours

In cases that require more information regarding product-related incidents or injuries, CPSC staff conducts face-to-face interviews with approximately 375 persons each year. On average, an on-site interview takes about 4.5 hours. CPSC staff also conducts about 175 in-depth investigations (IDIs) by telephone annually. Each telephone IDI requires about 20 minutes. CPSC staff is planning to conduct about 50 internet-based questionnaires per year, which require about 20 minutes each. The CPSC estimates 1,763 annual burden hours on these respondents: 1,688 hours for face-to-face interviews; 58 hours for in-depth telephone interviews, and 17 hours for internet-based questionnaires. CPSC staff estimates the value of the time required for reporting at $36.77 an hour (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2019: *https://www.bls.govnew.releaseecec.toc.htm*). At this valuation, the estimated annual cost to the public is about $64,826.

The total burden hours for the information collection is 102,544 (100,781 NEISS and 1,763 other), which is an increase of 21,334 hours. The increase in burden is due primarily to the increase in the number of emergency department charts being reviewed and coded since this collection of information was last approved by OMB in 2017.

This information collection request excludes the burden associated with

other publicly available Consumer Product Safety Information Databases, such as internet complaints, Hotline, and Medical Examiners and Coroners Alert Project (MECAP) reports, which are approved under OMB control number 3041–0146. This information collection request also excludes the burden associated with follow-up investigations conducted by other federal agencies.

D. Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–21875 Filed 10–7–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement for the Modification of the Condor 1 and Condor 2 Military Operations Areas Used By the 104th Fighter Wing of the Massachusetts Air National Guard

AGENCY: Department of the Air Force, DoD.

ACTION: Withdrawal of Notice of Intent.

SUMMARY: The Air National Guard (ANG) and Federal Aviation Administration (FAA) are notifying interested parties of the decision to withdraw the Notice of Intent to prepare an environmental impact statement for the Modification of the Condor Military Operation Areas used by the 104th Fighter Wing of the Massachusetts Air National Guard.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice please contact: Mr Ramon Ortiz, NGB/A4AM, Program Manager-Technical Lead, Air National Guard Readiness Center, 3501 Fetchet Avenue, Andrews AFB, MD 20762–9157, telephone: (240) 612–7042; or email: *usaf.jbanafw.ngb-a4.mbx.a4a-nepa-comments@mail.mil.*

SUPPLEMENTARY INFORMATION: The original NOI was published on June 17, 2009 and corrected on June 25, 2009 (74 FR 30284), and followed an in-depth Environmental Assessment process initiated in 2008. The ANG decision to withdraw the NOI was based on the determination that due to mission evolution, the proposed action is no longer needed.

Adriane S. Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–21873 Filed 10–7–19; 8:45 am]

BILLING CODE 5001–05–P

ELECTION ASSISTANCE COMMISSION

Proposed Information Collection—2020 Election Administration and Voting Survey; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance the *Paperwork Reduction Act* of 1995, the EAC announces an information collection and seeks public comment on the provisions thereof. The EAC intends to submit this proposed information collection (2020 Election Administration and Voting Survey, or EAVS) to the Director of the Office of Management and Budget for approval. The 2020 EAVS asks election officials questions concerning voting and election administration, including the following topics: Voter registration; overseas and military voting; voting by mail; early in-person voting; polling operations; provisional voting; voter participation; election technology; election policy; and other related issues.

DATES: Written comments must be submitted on or before December 6, 2019.

Comments: Public comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the proposed information collection should be submitted electronically via *https://www.regulations.gov* (docket ID: EAC–2019–0001). Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, *Attn:* EAVS.

Obtaining a Copy of the Survey: To obtain a free copy of the draft survey instrument: (1) Download a copy at *https://www.regulations.gov* (docket ID: EAC–2019–0001); or (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300 Silver Spring, MD 20910, *Attn:* EAVS.

FOR FURTHER INFORMATION CONTACT: Dr. Nichelle Williams at 301–563–3919, or email *clearinghouse@eac.gov;* U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910

SUPPLEMENTARY INFORMATION:

Title and OMB Number: 2020 Election Administration and Voting Survey; OMB Number Pending.

Needs and Uses

The EAC issues the EAVS to meet its obligations under the Help America Vote Act of 2002 (HAVA) to serve as national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill both the EAC and the Department of Defense Federal Voting Assistance Program's (FVAP) data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal elections. In addition, under the NVRA, the EAC is responsible for collecting information and reporting, biennially, to Congress on the impact of that statute. The information the states are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations. States that respond to questions in this survey concerning voter registration-related matters will meet their NVRA reporting requirements under 52 U.S.C. 20508 and EAC regulations. Finally, UOCAVA

mandates that FVAP work with the EAC and chief state election officials to develop standards for reporting UOCAVA voting information (52 U.S.C. 20302) and that FVAP will store the reported data and present the findings within the congressionally-mandated report to the President and Congress. Additionally, UOCAVA requires that ''not later than 90 days after the date of each regularly scheduled general election for Federal office, each state and unit of local government which administered the election shall (through the state, in the case of a unit of local government) submit a report to the EAC on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public.' States that complete and timely submit the UOCAVA section of the survey to the EAC will fulfill their UOCAVA reporting requirement under 52 U.S.C. 20302. In order to fulfill the above requirements, the EAC is seeking information relating to the period from the Federal general election day 2018 +1 through the November 2020 Federal general election. The EAC will provide the data regarding UOCAVA voting to FVAP after data collection is completed. This data sharing reduces burden on local election offices because FVAP does not have to conduct its own data collection to meet its reporting requirements.

Affected Public (Respondents): State or local governments, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Affected Public: State or local government.

Number of Respondents: 56.

Responses per Respondent: 1.

Estimated Burden per Response: 235 hours per collection, 117.5 hours annualized.

Estimated Total Annual Burden Hours: 13,160 hours per collection, 6,580 hours annualized.

Frequency: Biennially.

* * * * *

Clifford D. Tatum,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2019–21908 Filed 10–7–19; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[Case Number 2019–006; EERE–2019–BT–WAV–0020]

Energy Conservation Program: Petition for Waiver of Bradford White Corporation From the Department of Energy Consumer Water Heaters Test Procedure and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver and grant of an interim waiver, and request for comments.

SUMMARY: This document announces receipt of and publishes a petition for waiver from Bradford White Corporation (''BWC''), which seeks a waiver for a specified consumer water heater basic model from the U.S. Department of Energy (''DOE'') test procedure used for determining the efficiency of consumer water heaters. BWC asserts that for that identified basic model, application of the calculation specified in the DOE test procedure to determine recovery efficiency yields an ''artificially high'' value that in turn results in a lower overall uniform energy factor value. Consequently, BWC seeks to use an alternate test procedure to address issues involved in testing the basic model identified in its petition. More specifically, BWC has requested that DOE waive the equation for calculating recovery efficiency of the consumer gas-fired storage water heater basic model for which the first occurrence of the main burner cutting out (''cut-out'') occurs during a draw. Instead, BWC requests that the recovery efficiency for this water heater be calculated using a revised recovery efficiency equation that accounts for the first cut-out occurring during a draw. For the reasons discussed in this document, DOE grants BWC an interim waiver from the DOE's consumer water heater test procedure for the basic model listed in the interim waiver, subject to use of the alternate test procedure as set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning BWC's petition, its suggested alternate test procedure, and the alternate test procedure in the Interim Waiver Order so as to inform its final decision on BWC's waiver request.

DATES: Written comments and information will be accepted on or before November 7, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2019–006'' and Docket number ''EERE–2019–BT–WAV–0020,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Bradford2019WAV0020@ee.doe.gov.* Include Case No. 2019–006 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2019–006, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a ''CD'', in which case it is not necessary to include printed copies.

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

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

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0020.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *AS_Waiver_Request@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include consumer water heaters, the focus of this document. (42 U.S.C. 6292(a)(4))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for consumer water heaters is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, subpart B, appendix E, *Uniform Test Method for Measuring the Energy Consumption of Water Heaters.*

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

II. Bradford White Corporation's Petition for Waiver and Application for Interim Waiver

On July 3, 2019, BWC filed a petition for waiver and a petition for interim waiver from the test procedure for consumer water heaters set forth at 10 CFR part 430, subpart B, appendix E.[3] The test procedure for water heaters includes a 24-hour Simulated Use Test (SUT) which consists of a series of hot water draws and standby periods during which the energy consumption of the water heater is measured. For storage-type water heaters, as the stored hot water loses heat through hot water draws and standby losses, the heat source (*e.g.,* the burner, heat pump, electric heating element) will turn on or ''cut-in'' to heat water within the tank as needed to maintain the setpoint temperature of the thermostat. Once the thermostat is satisfied, the heat source will turn off or ''cut-out.'' The time during which the heat source is on is referred to as a ''recovery period'' because the water heater is recovering the heat lost from the stored water. The first recovery period of the 24-hour SUT is used to calculate the ''recovery efficiency'' of the water heater, which impacts the overall measure of efficiency (*i.e.,* the uniform energy factor (UEF)). BWC stated that for gas and heat pump storage-type consumer water heaters for which the first cut-out of the 24-hour SUT occurs in the middle of one of the draws, the use of average water temperatures in the DOE test procedure calculation for recovery efficiency artificially inflates the calculated energy delivered from the system. BWC asserted that this yields an artificially higher recovery efficiency and results in a lower overall UEF. In support of its waiver request, BWC submitted test data for an individual model based on the platform of the basic model for which BWC seeks a waiver.

BWC also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant

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

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] The specific basic model for which the petition applies is the consumer water heater basic model RG2PV50S*N. Although BWC initially included 50 consumer water heater basic models in its July 3, 2019 petition for waiver, BWC later limited the request to include only the RG2PV50S*N basic model via email correspondence on July 30, 2019. This email correspondence is included in the docket at: *https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0020.*

immediate relief pending a determination of the petition for waiver. *See* 10 CFR 430.27(e)(2).

Based on the assertions made in support of the petition, absent an interim waiver, DOE has initially determined that the DOE test procedure yields unrepresentative results for a consumer water heater that completes the first recovery in the middle of a draw. Specifically, calculating the energy delivered during the first recovery period by using the total mass and average water temperatures across multiple draws to determine the energy delivered yields a higher recovery efficiency for those units for which the first cut-out of the 24-hour SUT occurs during a hot water draw. This in turn would result in a lower overall UEF that is not representative of its true energy efficiency.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered products. (42 U.S.C. 6293(c)) Consistency is important when making representations about the energy efficiency of products, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to its regulations at 10 CFR 430.27, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic model addressed by the interim waiver.

BWC seeks to use an alternate test procedure to test and rate one consumer water heater basic model. Specifically, BWC seeks to test the affected consumer water heater basic model according to the DOE test procedure at 10 CFR part 430, subpart B, appendix E, except that the recovery efficiency equation in section 6.3.2 would be replaced with an alternate equation as shown below. Instead of calculating the recovery efficiency using the total mass of hot water drawn and average water temperature rise across all draws that occur until the end of the first recovery period as is done in the DOE test procedure, the requested alternate recovery efficiency equation computes the energy delivered during the first recovery using the mass of hot water drawn and water temperature rise for each draw individually and sums them. As submitted by BWC, the alternative test procedure would replace the equation in section 6.3.2 of Appendix E with the following equation for determining recovery efficiency, η_r:

$$\eta_r = \sum_{i=1}^{N_r} \frac{m_i * C_{pi} * \left(\overline{T}_{del,i} - \overline{T}_{in,i}\right)}{Q_r} + \frac{V_{st}\rho_2 C_{p2}\left(\overline{T}_{\max,1} - \overline{T}_0\right)}{Q_r}$$

Where:

N_r = number of draws that the first recovery period occurred during.

First Recovery Period: is defined by when the main burner of a storage water heater is lit and raising the temperature of the stored water until cut-out; in the case the cut-out* occurs during a subsequent draw, the first recovery period is to include the time until the draw of water from the tank stops.

m_i = Mass of draw i.

C_{pi} = Average Specific heat of draw i.

*If after the first cut-out occurs during a subsequent draw, a subsequent cut-in occurs prior to the draw completion, the first recovery period is to include the time until the subsequent cut-out occurs, prior to another draw.

Based on the Federal test procedure DOE understands the remaining variables in the equation submitted by BWC to be as follows:

$\overline{T}_{del,i}$ = average water outlet temperature measured during *i*th draw of the first recovery period, °F (°C).

$\overline{T}_{in,i}$ = average water inlet temperature measured during the *i*th draw of the first recovery period, °F (°C).

V_{st} = as defined in section 6.3.1.

ρ_2 = density of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, lb/gal (kg/L).

Cp_2 = specific heat of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, Btu/(lb·°F) (kJ/(kg·°C).

$\overline{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first recovery of the 24-hour simulated use test, °F (°C).

$\overline{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated-use test, °F (°C).

Q_r = Energy consumption of water heater from the beginning of the test to the end of the first recovery period.

IV. Grant of an Interim Waiver

DOE has reviewed BWC's application for an interim waiver, the alternate test procedure requested by BWC, and confidential test data submitted by BWC, as well as test data from prior DOE testing of consumer water heaters. For the specified consumer water heater basic model, BWC's suggested calculation for recovery efficiency, which uses a summation of measurements for each individual draw rather than average values to determine the energy in the delivered hot water during the first recovery period, results in a more accurate calculation of recovery efficiency when the first cut-out occurs during a draw, and avoids artificial inflating of the recovery efficiency (resulting in a lower UEF value) that occurs under the calculation in DOE's current test procedure.

BWC's petition for waiver suggests that this issue may not occur for every individual model within a basic model designation. DOE has modified the suggested alternate test procedure to specify that the alternate calculation applies only if during testing the first cut-out of the 24-hour SUT occurs during a hot water draw.

Based on DOE's review of the alternate test procedure suggested by BWC, as modified by DOE, it appears to allow for the accurate measurement of efficiency of the specified basic model, while alleviating the testing problems associated with BWC's implementation of water heating testing for this basic model. Consequently, DOE has determined that BWC's petition for waiver will likely be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant BWC immediate relief pending a determination of the petition for waiver.

For the reasons stated, DOE has granted an interim waiver to BWC for the specified consumer water heater basic model in BWC's petition. Therefore, DOE has issued an *Order* stating:

(1) BWC must test and rate the following consumer water heater basic model with the alternate test procedure set forth in paragraph (2).

Brand	Basic model
BRADFORD WHITE, JETGLAS	RG2PV50S*N

(2) The alternate test procedure for the BWC basic model referenced in paragraph (1) of this Order is the test procedure for consumer water heaters prescribed by DOE at 10 CFR part 430, subpart B, appendix E, except for equation 6.3.2, as detailed below. All other requirements of appendix E and DOE's regulations remain applicable.

The changes to section 6.3.2 of Appendix E read as follows:

6.3.2 *Recovery Efficiency.*

6.3.2.1 Except as provided in section 6.3.2.2 of this Appendix, the recovery efficiency for gas storage-type water heaters, η_r, is computed as:

$$\eta_r = \left(\frac{M_1 * C_{p1} * \left(\overline{T}_{del,1} - \overline{T}_{in,1} \right)}{Q_r} + \frac{V_{st} * \rho_2 * C_{p2} \left(\overline{T}_{max,1} - \overline{T}_0 \right)}{Q_r} \right)$$

Where:

M_1 = total mass removed from the start of the 24-hour simulated-use test to the end of the first recovery period, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1 \rho_1$

Where:

V_1 = total volume removed from the start of the 24-hour simulated-use test to the end of the first recovery period, gal (L).

ρ_1 = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

Cp_1 = specific heat of the withdrawn water evaluated at $(\overline{T}_{del,1} + \overline{T}_{in,1})/2$, Btu/(lb·°F) (kJ/(kg·°C))

$\overline{T}_{del,1}$ = average water outlet temperature measured during the draws from the start of the 24-hour simulated-use test to the end of the first recovery period, °F (°C).

$\overline{T}_{in,1}$ = average water inlet temperature measured during the draws from the start of the 24-hour simulated-use test to the end of the first recovery period, °F (°C).

V_{st} = as defined in section 6.3.1.

ρ_2 = density of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, lb/gal (kg/L).

Cp_2 = specific heat of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, Btu/(lb·°F) (kJ/(kg·°C).

$\overline{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first recovery of the 24-hour simulated use test, °F (°C).

$\overline{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated-use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first recovery period, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3412 Btu.)

6.3.2.2 For gas storage-type water heaters, if the first cut-out occurs during a draw, the recovery efficiency, η_r, is computed as:

$$\eta_r = \sum_{i=1}^{N_r} \frac{m_i * C_{pi} * \left(\overline{T}_{del,i} - \overline{T}_{in,i} \right)}{Q_r} + \frac{V_{st} \rho_2 C_{p2} \left(\overline{T}_{max,1} - \overline{T}_0 \right)}{Q_r}$$

Where:

N_r = number of draws occurring during the first recovery period. The first recovery period is defined by the time when the main burner of a storage water heater is lit (''cut-in'') and continues during the temperature rise of the stored water until the main burner cuts-off (''cut-out''); if the cut-out occurs during a subsequent draw, the first recovery period includes the time until the draw of water from the tank stops. If, after the first cut-out occurs but during a subsequent draw, a subsequent cut-in occurs prior to the draw completion, the first recovery period includes the time until the subsequent cut-out occurs, prior to another draw.

m_i = mass of draw i.

C_{pi} = average specific heat of draw i.

$\overline{T}_{del,i}$ = average water outlet temperature measured during *i*th draw of the first recovery period, °F (°C).

$\overline{T}_{in,i}$ = average water inlet temperature measured during the *i*th draw of the first recovery period, °F (°C).

V_{st} = as defined in section 6.3.1.

ρ_2 = density of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, lb/gal (kg/L).

Cp_2 = specific heat of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, Btu/(lb·°F) (kJ/(kg·°C).

$\overline{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first recovery of the 24-hour simulated use test, °F (°C).

$\overline{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated-use test, °F (°C).

Q_r = energy consumption of water heater from the beginning of the test to the end of the first recovery period.

(3) *Representations.* BWC must make representations about the efficiency of the basic model listed in paragraph (1) for compliance, marketing, or other purposes only to the extent that the basic model has been tested in accordance with the provisions in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This interim waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This interim waiver is issued to BWC on the condition that information and test data provided by BWC are valid. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, BWC may request that DOE rescind or modify the interim waiver if BWC discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) BWC remains obligated to fulfill any certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. BWC may submit a new or amended petition for waiver and application for an interim waiver, as appropriate, for additional basic models of consumer water heaters. Alternatively, if appropriate, BWC may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

V. Request for Comments

DOE is publishing BWC's petition for waiver in its entirety as originally submitted, pursuant to 10 CFR 430.27(b)(1)(iv), absent any confidential business information.[4] The petition includes a suggested alternate test procedure, as specified in section III of this document, to determine the

[4] DOE is publishing the July 3, 2019 petition for waiver as initially submitted by BWC, including the list of basic models in Attachment 1 that BWC included in its petition for waiver. In subsequent email correspondence on July 30, 2019, BWC limited the petition to include only the RG2PV50S*N basic model. This email correspondence is included in the docket at: *https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0020.*

efficiency of BWC's specified consumer water heater, which DOE modified slightly in the grant of an interim waiver as discussed in section IV of this document. DOE may consider including the alternate procedure specified in the Interim Waiver Order in a subsequent Decision and Order.

DOE invites all interested parties to submit in writing by November 7, 2019, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Eric Truskoski, *etruskoski@bradfordwhite.com,* 725 Talamore Dr., Ambler, PA 19002.

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

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

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

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

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

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

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

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

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

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

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

Signed in Washington, DC, on September 23, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

July 3, 2019

U.S. Department of Energy, Building Technologies Program, MS EE–2J Test Procedure Waivers, 1000 Independence Ave. SW, Washington, DC 20585–0121

Re: Waiver for Test Procedure for Residential Water Heaters

To Whom It May Concern:

Pursuant to the provisions of 10 CFR 430.27(m), Bradford White Corporation (BWC) is hereby applying for a waiver of the test procedure for calculating the recovery efficiency of residential gas and heat pump storage-type water heaters with a rated storage volume greater than or equal to two gallons, 10 CFR 430, Subpart B, Appendix E, Section 6.3.2. The calculation of the recovery efficiency is used as part of the 24-hour Simulated Use Test (SUT) used to calculate the efficiency, in terms of Uniform Energy Factor (UEF), for residential water heaters.

Basic Models for This Waiver Petition

The basic models that BWC is respectfully requesting a waiver, including in the interim are listed in

Attachment 1. This is for both the ''BRADFORD WHITE'' and ''JETGLAS'' brand names.

Basis for Requested Waiver

When the first cut-out during the SUT occurs in the middle of one of the draws, the averaging of these temperatures artificially inflates the calculated energy delivered from the system, which yields an artificially higher calculated recovery efficiency. With an artificially higher recovery efficiency, the resulting UEF is lower. This means that a manufacturer that has a product, as an unintended result of its design, that completes its recovery in the middle of a draw would be disadvantaged versus a competitor that has a similarly designed product but completes its first cut-out between draws, which will result in less units sold.

The manner in which a product initiates a recovery and completes its recovery is dependent on a multitude of factors including but not limited to: Storage volume; input; diptube length; diptube design; tank construction/geometry; thermostat placement; and thermostat differential. It is difficult to ascertain which one or more of these design characteristics would result in the product completing its recovery while a draw is occurring. Regardless, the resulting manner that a product recovers from a water draw should not penalize one product over another.

List of Manufacturers

The list of manufacturers of all other basic models of residential gas, oil, and heat pump storage- type water heaters with a rated storage volume greater than or equal to two gallons marketed in the United States known to BWC is included as Attachment 2.

Proposed Alternative Test Procedure

BWC has reviewed the alternate equation, included as Attachment 3, for calculating recovery efficiency of residential gas, oil, and heat pump storage-type water heaters with a rated storage volume greater than or equal to two gallons with the Air-Conditioning, Heating, & Refrigeration Institute (AHRI), and other interested parties, and believes it provides a more accurate calculation of recovery efficiency. The proposed equation accounts for a recovery that could end in the middle of any draw or in between draws.

Furthermore, ASHRAE Standard Project Committee 118.2 has reviewed this equation and included it in the most recent draft of their standard, Method of Testing for Rating Residential Water Heaters. This draft will shortly be sent out for public review and comment. We respectfully request DOE grant a waiver to use this alternative equation in lieu of the procedure specified in the current DOE efficiency test procedure.

Interim Waiver Request

Bradford White Corporation also petitions for an interim waiver to allow us to use the equation shown in Attachment 3 to calculate the recovery efficiency of the identified basic models. We believe it is in both our interest and DOE's interest to have an interim test procedure, which provides a more accurate calculation of the recovery efficiency of the identified basic models.

If BWC is not granted an interim waiver, BWC will continue to be put at a competitive advantage where the resulting UEF will be lower (for the reasons highlighted above) than a similarly designed competitive model, which will result in less units sold.

Respectfully submitted,

Bradford White Corporation

/s/Eric Truskoski

Eric Truskoski

Director of Government and Regulatory Affairs

Attachments:

1. List of basic models manufactured by Bradford White Corporation.
2. List of manufacturers of residential gas and heat pump storage-type water heaters with a rated storage volume greater than or equal to two gallons
3. Alternative recovery efficiency calculation

[Original List Submitted by Bradford White Corporation]

Attachment 1—List of Basic Models manufactured by Bradford White Corporation

Brand Names	Model No.
"BRADFORD WHITE" and "JETGLAS".	RC2PV50H*N
"BRADFORD WHITE" and "JETGLAS".	RE2H50S*-*****
"BRADFORD WHITE" and "JETGLAS".	RE2H80T*-*****
"BRADFORD WHITE" and "JETGLAS".	RG130T*N
"BRADFORD WHITE" and "JETGLAS".	RG140T*N
"BRADFORD WHITE" and "JETGLAS".	RG150T*N
"BRADFORD WHITE" and "JETGLAS".	RG1D30T*N
"BRADFORD WHITE" and "JETGLAS".	RG1D40S*N
"BRADFORD WHITE" and "JETGLAS".	RG1D40T*N
"BRADFORD WHITE" and "JETGLAS".	RG1D50T*N
"BRADFORD WHITE" and "JETGLAS".	RG1PV40S*N
"BRADFORD WHITE" and "JETGLAS".	RG1PV50S*N
"BRADFORD WHITE" and "JETGLAS".	RG1PV55H*N
"BRADFORD WHITE" and "JETGLAS".	RG2100H*N
"BRADFORD WHITE" and "JETGLAS".	RG230S*N
"BRADFORD WHITE" and "JETGLAS".	RG230T*N
"BRADFORD WHITE" and "JETGLAS".	RG240S*N
"BRADFORD WHITE" and "JETGLAS".	RG240T*N
"BRADFORD WHITE" and "JETGLAS".	RG250H*N
"BRADFORD WHITE" and "JETGLAS".	RG250L*N
"BRADFORD WHITE" and "JETGLAS".	RG250S*N
"BRADFORD WHITE" and "JETGLAS".	RG250T*N
"BRADFORD WHITE" and "JETGLAS".	RG255H*N
"BRADFORD WHITE" and "JETGLAS".	RG275H*N
"BRADFORD WHITE" and "JETGLAS".	RG2D40S*N
"BRADFORD WHITE" and "JETGLAS".	RG2D50S*N
"BRADFORD WHITE" and "JETGLAS".	RG2DV40S*N-***
"BRADFORD WHITE" and "JETGLAS".	RG2DV50H*N-***
"BRADFORD WHITE" and "JETGLAS".	RG2DV50S*N-***
"BRADFORD WHITE" and "JETGLAS".	RG2DVMH30T*N
"BRADFORD WHITE" and "JETGLAS".	RG2DVMH40T*N
"BRADFORD WHITE" and "JETGLAS".	RG2F40S*N
"BRADFORD WHITE" and "JETGLAS".	RG2F50S*N
"BRADFORD WHITE" and "JETGLAS".	RG2MH30T*N
"BRADFORD WHITE" and "JETGLAS".	RG2MH40T*N
"BRADFORD WHITE" and "JETGLAS".	RG2PDV40S*N
"BRADFORD WHITE" and "JETGLAS".	RG2PDV50H*N
"BRADFORD WHITE" and "JETGLAS".	RG2PDV50S*N
"BRADFORD WHITE" and "JETGLAS".	RG2PDV75H*N
"BRADFORD WHITE" and "JETGLAS".	RG2PV40S*N
"BRADFORD WHITE" and "JETGLAS".	RG2PV40T*N
"BRADFORD WHITE" and "JETGLAS".	RG2PV50H*N
"BRADFORD WHITE" and "JETGLAS".	RG2PV50S*N
"BRADFORD WHITE" and "JETGLAS".	RG2PV50T*N
"BRADFORD WHITE" and "JETGLAS".	RG2PV75H*N
"BRADFORD WHITE" and "JETGLAS".	URG250H*N
"BRADFORD WHITE" and "JETGLAS".	URG2DV50H*N-***
"BRADFORD WHITE" and "JETGLAS".	URG2DV50S*N-***
"BRADFORD WHITE" and "JETGLAS".	URG2PDV50H*N
"BRADFORD WHITE" and "JETGLAS".	URG2PV50H*N

Attachment 2—List of Manufacturers of Residential Gas, Oil, and Heat Pump Storage-Type Water Heaters With a Rated Storage Volume Greater Than or Equal to Two Gallons

Company:

- A. O. Smith Corporation
- Rheem Sales Company, Inc.
- Bock Water Heaters, Inc.
- GIANT Factories, Inc.
- Bradford White Corp.
- HTP Comfort Solutions LLC
- Rinnai America Corporation
- Vesta DS, Inc.
- Vaughn Thermal Corporation
- GD Midea Heating & Ventilating Equipment Co., Ltd.

Attachment 3—Alternative Recovery Efficiency Equation

How the current calculation is written:

$$\eta_r = \left(\frac{M_1 * C_{p1} * \left(\bar{T}_{del,1} - \bar{T}_{in,1}\right)}{Q_r} + \frac{V_{st} * \rho_2 * C_{p2}\left(\bar{T}_{max,1} - \bar{T}_0\right)}{Q_r}\right)$$

Where this calculation falls short is when our first cut-out occurs into or through subsequent draws. The definition of $T_{del,1}$ and $T_{in,\ 1}$ are currently defined as the ''average water temperature measured during the Draws from the start of the 24 hour simulated-use test to the end of the first recovery period, °F, (°C).''

Our Proposal

We would like to propose the calculation below to avoid inflating the energy delivered that the averaging causes

$$\eta_r = \sum_{i=1}^{N_r} \frac{m_i * C_{pi} * \left(\bar{T}_{del,i} - \bar{T}_{in,i}\right)}{Q_r} + \frac{V_{st}\rho_2 C_{p2}\left(\overline{\bar{T}}_{max,1} - \overline{\bar{T}}_0\right)}{Q_r}$$

N_r = number of draws that the first recovery period occurred during.

First Recovery Period: Is defined by when the main burner of a storage water heater is lit and raising the temperature of the stored water until cut-out; in the case the cut-out * occurs during a subsequent draw, the first recovery period is to include the time until the draw of water from the tank stops.

m_i = Mass of draw i.
C_{pi} = Average Specific heat of draw i.
Q_r = Energy consumption of water heater from the beginning of the test to the end of the first recovery period

For example, if $N_r = 2$

$$\eta_r = \left(\frac{mass_1 * C_{p1} * \left(\bar{T}_{del,1} - \bar{T}_{in,1}\right)}{Q_r} + \frac{mass_2 * C_{p2} * \left(\bar{T}_{del,2} - \bar{T}_{in,2}\right)}{Q_r} + \frac{V_{st} * \rho_2 * C_{p2}\left(\bar{T}_{max,1} - \bar{T}_0\right)}{Q_r}\right)$$

*If after the first cut-out occurs during a subsequent draw, a subsequent cut-in occurs prior to the draw completion, the first recovery period is to include the time until the subsequent cut-out occurs, prior to another draw.

[FR Doc. 2019–21935 Filed 10–7–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–2–000.

Applicants: Bucksport Generation LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Bucksport Generation LLC.

Filed Date: 10/1/19.

Accession Number: 20191001–5288.

Comments Due: 5 p.m. ET 10/22/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2583–000.

Applicants: Green River Wind Farm Phase 1, LLC.

Description: Amendment to August 13, 2019 Green River Wind Farm Phase 1, LLC. tariff filing.

Filed Date: 10/2/19.

Accession Number: 20191002–5077.

Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER20–16–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–10–01_Attachment P Clean-up to be effective 12/1/2019.

Filed Date: 10/1/19.

Accession Number: 20191001–5278.

Comments Due: 5 p.m. ET 10/22/19.

Docket Numbers: ER20–17–000.

Applicants: Tenaska Pennsylvania Partners, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 11/1/2019.

Filed Date: 10/1/19.

Accession Number: 20191001–5286.

Comments Due: 5 p.m. ET 10/22/19.

Docket Numbers: ER20–18–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–10–02_Termination of SA 3220 Flying Cow Wind-OTP E&P (BSSB) (J493 J510) to be effective 10/3/2019.

Filed Date: 10/2/19.

Accession Number: 20191002–5008.

Comments Due: 5 p.m. ET 10/23/19.

Docket Numbers: ER20–19–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 3602, Queue No. Y1–057 to be effective 7/29/2019.

Filed Date: 10/2/19.

Accession Number: 20191002–5051.

Comments Due: 5 p.m. ET 10/23/19.

Docket Numbers: ER20–20–000.

Applicants: DTE Atlantic, LLC.

Description: Baseline eTariff Filing: DTE Atlantic LLC. MBR Tariff Application to be effective 10/3/2019.

Filed Date: 10/2/19.

Accession Number: 20191002–5074.

Comments Due: 5 p.m. ET 10/23/19.

Docket Numbers: ER20–21–000.
Applicants: Southwest Power Pool, Inc.
Description: Notice of Cancellation of Generator Interconnection Agreement of Southwest Power Pool, Inc.
Filed Date: 10/2/19.
Accession Number: 20191002–5076.
Comments Due: 5 p.m. ET 10/23/19.
Docket Numbers: ER20–22–000.
Applicants: Harbor Cogeneration Company, LLC.
Description: § 205(d) Rate Filing: Normal filing 2019 to be effective 10/3/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5111.
Comments Due: 5 p.m. ET 10/23/19.
Docket Numbers: ER20–23–000.
Applicants: DTE Atlantic, LLC.
Description: Baseline eTariff Filing: DTE Atlantic LLC. MBR Tariff Application to be effective 10/3/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5118.
Comments Due: 5 p.m. ET 10/23/19.
Docket Numbers: ER20–24–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–10–02_SA 3358 OTP–OTP FSA (G359R) Hankinson-Ellendale & Big Stone-Blair to be effective 12/2/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5133.
Comments Due: 5 p.m. ET 10/23/19.
Docket Numbers: ER20–25–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–10–02_SA 3357 OTP-Dakota Range III FSA (J488) Hankinson-Ellendale to be effective 12/2/2019.
Filed Date: 10/2/19.
Accession Number: 20191002–5153.
Comments Due: 5 p.m. ET 10/23/19.
Docket Numbers: ER20–26–000.
Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.
Description: § 205(d) Rate Filing: 20191002_IA_ROE_Update to be effective 1/1/2020.
Filed Date: 10/2/19.
Accession Number: 20191002–5175.
Comments Due: 5 p.m. ET 10/23/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–21974 Filed 10–7–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–15–000]

Notice Inviting Post-Technical Conference Comments: Managing Transmission Line Ratings

On September 10 and September 11, 2019, Federal Energy Regulatory Commission (Commission) staff convened a technical conference to discuss what transmission line ratings and related practices might constitute best practices, and what, if any, Commission action in these areas might be appropriate.

All interested persons are invited to file initial and reply post-technical workshop comments on any or all of the questions listed in the attachment to this Notice. Commenters may also respond to the questions outlined in the September 4, 2019 supplemental notice of technical conference.[1] Commenters need not answer all of the questions. Commenters should organize responses consistent with the structure of the attached questions. Commenters are also invited to reference material previously filed in this docket, including technical workshop transcripts, but are encouraged to avoid repetition or replication of previous material. Initial comments must be submitted on or before 30 days from the date of this notice. Reply comments must be submitted on or before 15 days after the deadline to submit initial comments.

For more information about this Notice, please contact:

Dillon Kolkmann (Technical Information), Office of Energy Policy and Information, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8650, *dillon.kolkmann@ferc.gov.*
Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840, *kevin.ryan@ferc.gov.*

Dated: October 2, 2019.

Kimberly D. Bose,

Secretary.

Post-Technical Conference Questions for Comment

Commenters may respond to the questions outlined in the September 4, 2019 supplemental notice of technical conference.[2] In addition, based on discussions during the Managing Transmission Line Ratings technical conference, Staff developed the following questions to better understand whether Commission action might be appropriate. To guide discussion, ambient-adjusted ratings (AAR) are defined as ratings that are adjusted daily, hourly, or more frequently and account for ambient air temperatures. Dynamic line ratings (DLRs) are defined as line ratings that are adjusted hourly or more frequently and account for local weather conditions (*e.g.,* ambient temperature, wind, precipitation, solar irradiation) and/or account for conductor parameters (conductor temperature, tension, sag, clearance), typically as measured by local sensors.

1. Discussion of a Possible Requirement for Transmission Owners To Implement AARs

a. Should transmission owners be required to implement AARs? If so, to which lines would the requirement apply? What criteria (*e.g.,* congestion, facility age) and process would be used to determine to which lines the requirement would apply? What would be the benefits or drawbacks to such a requirement?

b. If AARs are required, should they be required for modeling in both the day-ahead and real-time markets?

c. What type of forecasting (*e.g.,* how frequently, how granularly, and of what variables) is needed to incorporate AARs and DLRs into both real-time and day-ahead markets? If forecasts submitted in day-ahead markets differ from the real-time rating, how should

[1] Available at *https://www.ferc.gov/CalendarFiles/20190904173327-AD19-15-000supplTC.pdf.*

[2] Available at *https://www.ferc.gov/CalendarFiles/20190904173327-AD19-15-000supplTC.pdf.*

the difference be treated by the transmission system operator? Who is liable if forecasted ratings are wrong?

d. Aside from ambient air temperature, are there other ambient conditions that can be forecasted or calculated without need for local sensors that should be considered in AARs? Should maximum possible solar irradiance intensity (conservatively calculated or forecast assuming no cloud cover) be included in calculation of any required AARs? Are there any instances where wind can be conservatively forecast without local sensors, such that wind should be considered in AARs for such lines?

2. Reducing Barriers to DLRs

a. Can RTOs/ISOs currently accept and use a DLR data stream from a transmission owner in both real-time and day-ahead markets? Can transmission owners outside of RTO/ISOs currently automatically implement a DLR data stream in operations? Are there limits on what type and amount of data can be received and incorporated into dispatch? Would a transmission owner's or RTO/ISO's implementation of AARs be sufficient to also implement DLRs? If not, what additional changes would be necessary and how feasible are such changes?

b. Would a requirement for transmission owners or other entities (*e.g.,* RTOs/ISOs) to study the cost effectiveness of DLRs on their most congested lines be appropriate? If so, what metrics for congestion (*e.g.,* congestion cost, hours of congestion) would be appropriate for determining the most congested lines?

3. AARs/DLRs in Available Transmission Capacity (ATC) Calculations

a. In the non-RTO/ISO regions, a transmission owner's use of AARs could affect ATC for transmission customers. ATC could also be affected at RTO/ISO seams. Given the importance of ATC calculations, should AARs/DLRs be incorporated into the determination of ATC? Specifically:

i. At what times in advance of transmission reservation and/or scheduling deadlines should ATC made possible through AARs/DLRs be made available to point-to-point and network customers?

ii. Should AARs/DLRs affect when network customers (and the transmission provider's own resources) are subjected to redispatch, load shedding, and/or curtailments under sections 30.5 and 33 of the pro forma open access transmission tariff (OATT)?

iii. Would any revisions be needed to section 30.5, section 33, or Attachment C of the pro forma OATT to accommodate a requirement to implement AARs or voluntary implementation of DLRs? Are there any other sections of the pro forma OATT that would be relevant to or affected by AAR/DLR implementation?

4. Discussion of Transparency of Transmission Line Rating Methodologies

Currently, some transmission line rating methodology information is made available through certain transmission expansion processes or voluntarily on certain transmission owners' websites. Transmission line rating methodologies are also sometimes provided in annual FERC Form 715 part 4 filings. Lastly, some RTO/ISOs post actual facility ratings on their open access same-time information system (OASIS) pages. However, there appear to be concerns about the inaccessibility of transmission line rating methodologies and resulting ratings.

a. Should transmission owners' transmission line rating methodology be made more transparent? If so, how and how much additional transparency? Should underlying assumptions be made available? Should transmission line ratings be made more transparent? If so, how? For both transmission line rating methodologies and resulting ratings, who should have access to such information?

b. Should transmission owners or other entities (*e.g.,* NERC regional entities or RTOs/ISOs) be required to develop a database to document each transmission facility's most limiting element? Should limiting elements consider first and second contingency operating conditions? Please describe the burden associated with reporting and maintaining such a database. Who should have access to such a database and what levels of confidentiality protections would need to exist for such a limiting elements database?

c. If a transmission system operator contacts a transmission owner to request an ad hoc increase in transmission line ratings above static or seasonal ratings, should information about the request be publicly posted? If so, where, when, and how often should such information be posted?

5. Review and Audit Procedures for Transmission Line Rating Practices

a. Are the current review and audit procedures for transmission line ratings sufficient to ensure that such transmission line ratings are consistent with the methodology set forth by the transmission owner under FAC–008?

b. What entities currently review or audit transmission line rating methodologies, assumptions, and values? What standards or criteria do these entities use in their reviews?

c. What changes, if any, should be made to the review and audit procedures for transmission line ratings?

d. What, if any, changes to information and document retention with respect to transmission line ratings might be needed?

e. Where should any non-reliability criteria (*e.g.,* economic) for transmission line ratings be established (*e.g.,* regulations, tariff, policy statement)? What should these criteria be, and how would the Commission ensure that such criteria for transmission line ratings are consistent with reliability criteria?

f. In implementing DLR, is there any data verification necessary from devices that measure DLR by the transmission system operators or transmission owners? If so, what data and why?

6. NERC Reliability Standards

a. Are there security concerns associated with implementing AARs and DLRs with respect to communicating line ratings and field measurements?

[FR Doc. 2019–21969 Filed 10–7–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–2901–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Bronco Plains Wind, LLC

This is a supplemental notice in the above-referenced Bronco Plains Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 22, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–21972 Filed 10–7–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–2–000]

Notice of Petition for Partial Waiver: Associated Electric Cooperative, Inc.

Take notice that on October 2, 2019, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations,[1] Associated Electric Cooperative, Inc. (Associated Electric or Petitioner), on behalf of Central Rural Electric Cooperative, Inc. (Central Rural), one of its 57 rural electric cooperative member-owners, filed a petition for partial waiver of certain obligations imposed on Central Rural under section 292.303(a) of the Commission's Regulations [2] implementing section 210 of the Public Utility Regulatory Policies Act of 1978, as amended,[3] all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on October 23, 2019.

Dated: October 2, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–21971 Filed 10–7–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 292.402 (2019).

[2] 18 CFR 292.303(a) (2019).

[3] 16 U.S.C. 824a–3.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15003–000; Project No. 10934–000]

Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process: New Hampshire Renewable Resources, LLC

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 15003–000.

c. *Date Filed:* August 6, 2019.

d. *Submitted By:* New Hampshire Renewable Resources, LLC (New Hampshire Renewable).

e. *Name of Project:* Sugar River II Project.

f. *Location:* On the Sugar River, in Sullivan County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Ian Clark, New Hampshire Renewable Resources, LLC, 65 Ellen Ave., Mahopac, NY 10541; Phone at 914–297–7645, or email at *ianc@dichotomycapital.com.*

i. *FERC Contact:* Michael Watts at (202) 502–6123; or *michael.watts@ferc.gov.*

j. The current license for the Sugar River II Project is held by Sugar River Hydro II, LLC (Sugar River Hydro) under Project No. 10934. On April 30, 2019, Sugar River Hydro filed a letter stating that it is not filing an application to relicense the project. On May 8, 2019, the Commission, pursuant to 18 CFR 16.25(a), issued a notice soliciting potential new applicants for the project, which provided until August 6, 2019 for potential applicants to submit a pre-application document (PAD) and notice of intent (NOI), and until February 6, 2021 to submit a license application. In response to the solicitation notice, New Hampshire Renewable filed a PAD and NOI for the Sugar River II Project, pursuant to 18 CFR 5.5 and 5.6 of the Commission's regulations. The licensing proceeding is commencing under Project No. 15003.

k. New Hampshire Renewable filed its request to use the Traditional Licensing Process (TLP) on August 6, 2019, and provided public notice of the request on August 20, 2019. In a letter dated October 2, 2019, the Director of the Division of Hydropower Licensing approved New Hampshire Renewable's request to use the TLP.

l. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we are designating New Hampshire Renewable as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

n. New Hampshire Renewable filed a PAD, including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

o. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number P–15003 to access the document. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at 169 Sunapee Street, Newport, NH 03773.

p. New Hampshire Renewable states its unequivocal intent to submit an application for a subsequent license for Project No. 15003–000. Pursuant to 18 CFR 16.20 and 16.25, an application for a subsequent license must be filed with the Commission at least 18 months from the date of filing of the NOI, *i.e.,* by February 6, 2021.

q. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 2, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–21970 Filed 10–7–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2019–0504; FRL–10000–87–ORD]

Availability of the IRIS Assessment Plan for Inorganic Mercury Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period associated with release of the IRIS Assessment Plan for Inorganic Mercury Salts. This document communicates information on the scoping needs identified by EPA program and regional offices and the IRIS Program's initial problem formulation activities. Specifically, the assessment plan outlines the objectives for the IRIS assessment and the type of evidence considered most pertinent to address the scoping needs. EPA is releasing this IRIS Assessment Plan for a 30-day public comment period in advance of a public science webinar planned for December 5, 2019. The Agency encourages the public to comment on all aspects of the assessment plan, including key science issues.

DATES: The 30-day public comment period begins October 8, 2019 and ends November 7, 2019. Comments must be received on or before November 7, 2019.

ADDRESSES: The IRIS Assessment Plan for Inorganic Mercury Salts will be available via the internet on the IRIS website at *https://www.epa.gov/iris/iris-recent-additions* and in the public docket at *https://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2019–0504.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the IRIS Assessment Plan for Inorganic Mercury Salts, contact Dr. James Avery, NCEA; phone: 202–564–1494; or email: *avery.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS Assessment Plans

EPA's IRIS Program is a human health assessment program that evaluates quantitative and qualitative information on the health effects that may result from exposure to chemicals found in the environment. Through the IRIS Program, EPA provides high quality science-based human health assessments to support the Agency's regulatory activities and decisions to protect public health. As part of scoping and initial problem formulation activities prior to the development of an assessment, the IRIS Program carries out a broad, preliminary literature survey to assist in identifying health effects that have been studied in relation to the chemical or substance of interest, as well as science issues that may need to be considered when evaluating toxicity. This information, in conjunction with scoping needs identified by EPA program and regional offices, is used to inform the development of an IRIS Assessment Plan (IAP).

The IAP communicates the plan for developing each individual chemical assessment to the public and includes summary information on the IRIS Program's scoping and initial problem formulation activities, objectives and specific aims for the assessment, and a PECO (Populations, Exposures, Comparators, and Outcomes) for the systematic review. The PECO provides the framework for developing detailed literature search strategies and inclusion/exclusion criteria, particularly with respect to evidence stream (*e.g.,* human, animal, mechanistic), exposure measures, and outcome measures. The IAP serves to inform the subsequent development of chemical-specific systematic review protocols, which will be made available for public review.

II. Public Webinar Information

To allow for public input, EPA is convening a public webinar to discuss the IRIS Assessment Plan for Inorganic Mercury Salts on December 5, 2019. Specific teleconference and webinar information regarding this public meeting will be provided through the IRIS website (*https://www.epa.gov/iris*) and via EPA's Human Health Risk Assessment (HHRA) and IRIS listservs. To register for the HHRA or IRIS listserv, visit the IRIS website (*https://www.epa.gov/iris*) or visit *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect.*

III. How To Submit Technical Comments to the Docket at *https://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2019–0504, by one of the following methods:

- *https://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.

• *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2019–0504. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *https://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *https://www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: September 26, 2019.

Tina Bahadori,

Director, National Center for Environmental Assessment.

[FR Doc. 2019–21957 Filed 10–7–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM)

Time and Date: Monday, October 21, 2019 from 10:00 a.m. until 11:30 a.m. (EDT).

Place: 811 Vermont Avenue NW, Room 1125B, Washington, DC 20571.

Agenda: Discussion of EXIM Bank policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

Public Participation: The meeting will be open to public participation and time will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building. You may contact India Walker at *external@exim.gov* to be placed on the attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email India Walker at *external@exim.gov* no later than 5:00 p.m. EDT on Thursday, October 17, 2019.

Members of the Press: For members of the press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building. Please email *external@exim.gov* to be placed on the attendee list.

Further Information: For further information, contact the Office of External Engagement at *external@exim.gov.*

Joyce Stone,

Program Specialist, Office of the General Counsel.

[FR Doc. 2019–21946 Filed 10–7–19; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0157, 3060–0176 and 3060–0996]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 9, 2019. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0157.

Title: Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 200 respondents; 200 responses.

Frequency of Response: Annual and on occasion reporting requirements.

Estimated Time per Response: 0.25 hours.

Total Annual Burden: 50 hours.

Total Annual Costs: $15,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter to the Commission the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The FCC staff uses the letter to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

OMB Control Number: 3060–0176.

Title: Section 73.1510, Experimental Authorizations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 230 respondents; 230 responses.

Estimated Time per Response: 2.25–5.25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 983 hours.

Total Annual Costs: $231,250.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.1510 require that a licensee of an AM, FM, and TV broadcast station to file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal transmission, and the proposed hours and duration of the experimentation. The data are used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation does not cause interference to other broadcast stations.

OMB Control Number: 3060–0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 210 respondents; 210 responses.

Estimated Time per Response: 0.5–6 hours.

*Frequency of Respons*e: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,029 hours.

Total Annual Costs: $2,126,100.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (''First R&O'') in MB Docket No. 09–52, FCC 10–24. The First R&O adopted changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the First R&O, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, Tribal consortia, and majority Tribal-owned entities proposing to serve Tribal lands. As adopted in the First R&O, the priority is only available when all of the following conditions are met: (1) The applicant is either a Federally recognized Tribe or Tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the area within the proposed station's daytime principal community contour is over that Tribe's Tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on Tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial Tribal-owned transmission service to the proposed community of license, which must be located on Tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims.

On March 3, 2011, the Commission adopted a Second Report and Order (''Second R&O''), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09–52, FCC 11–28. The First Order on Reconsideration modified the initially adopted Tribal Priority coverage requirement, by creating an alternate coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their Tribal lands are too small or irregularly shaped to comprise 50 percent of a station's signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour encompasses 50 percent or more of that Tribe's Tribal lands, but does not cover more than 50 percent of the Tribal lands of a non-applicant Tribe; (ii) serves at least 2,000 people living on Tribal lands, and (iii) the total population on Tribal lands residing within the station's service contour constitutes at

least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will now enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority.

The modifications to the Commission's allotment and assignment policies adopted in the Second R&O included a rebuttable ''Urbanized Area service presumption'' under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community. In the case of an AM station, the determination of whether a proposed facility ''could be modified'' to cover 50 percent or more of an Urbanized Area will be made based on the applicant's certification in the Section 307(b) showing that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Section 307(b) showing must include a compelling showing (a) that the proposed community is truly independent from the Urbanized Area; (b) of the community's specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

In the case of applicants for new AM stations making a showing under Priority (4), other public interest matters, an applicant that can demonstrate that its proposed station would provide third, fourth, or fifth reception service to at least 25 percent of the population in the proposed primary service area, where the proposed community of license has two or fewer transmission services, may receive a dispositive Section 307(b) preference under Priority (4). An applicant for a new AM station that cannot demonstrate that it would provide the third, fourth, or fifth reception service to the required population at a community with two or fewer transmission services may also, under Priority (4), calculate a ''service value index'' as set forth in the case of Greenup, Kentucky and Athens, Ohio, Report and Order, 2 FCC Rcd 4319 (MMB 1987). If the applicant can demonstrate a 30 percent or greater difference in service value index between its proposal and the next highest ranking proposal, it can receive a dispositive Section 307(b) preference under Priority (4). Except under these circumstances, dispositive Section 307(b) preferences will not be granted under Priority (4) to applicants for new AM stations. The Commission specifically stated that these modified allotment and assignment procedures will not apply to pending applications for new AM stations and major modifications to AM facilities filed during the 2004 AM Auction 84 filing window.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–21940 Filed 10–7–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1022]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 7, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1022.

Title: Sections 101.1403, 101.103(f), 101.1413, 101.1440, 101.1417 and 25.139 (MVDDS reporting, recordkeeping and third-party disclosures; NGSO FSS and DBS recordkeeping and third-party disclosures)

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 18 respondents; 2,238 responses.

Estimated Time per Response: 0.25 hour–40 hours.

Frequency of Response: Annual and on occasion reporting requirements; 5- and 10-years reporting requirements; third party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

Total Annual Burden: 5,316 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The collection is being revised because, the Commission consolidated the information collection requirements currently contained in collection 3060–1021 (§ 25.139) into 3060–1022; therefore, OMB Control Number 3060–1021 will be discontinued once the consolidation is approved by OMB. The Commission is also revising estimates based on updated licensing activity with no programmatic changes. This collection includes a Part 25 rule and various rules in Part 101 that govern record retention, reporting, and third-party disclosure requirements related to satellite and terrestrial sharing of the 12.2–12.7 GHz band. The satellite operators are Non-Geostationary Orbit Fixed Satellite Service (NGSO FSS) and Direct Broadcast Satellite (DBS) Service. The terrestrial operators are Multichannel Video Distribution and Data Service (MVDDS). The following information collected will assist the Commission in analyzing trends and competition in the marketplace. Section 25.139 requires NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared to enable MVDDS licensees to determine whether a proposed MVDDS transmitting antenna meets the minimum spacing requirement relative to qualifying, existing NGSO FSS subscriber receivers (set forth in § 101.129, FCC Rules). Section 101.1403 requires certain MVDDS licensees that meet the statutory definition of Multichannel Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located 47 U.S.C. 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in § 325(b)(2) of the Communications Act of 1934. Section 101.103(f) requires MVDDS licensees to provide notice of intent to construct a proposed antenna to NGSO FSS licensees operating in the 12.2–12.7 GHz frequency band and to establish and maintain an internet website of all existing transmitting sites and transmitting antenna that are scheduled for operation within one year including the ''in service'' dates. Section 101.1413, as a construction requirement, requires MVDDS licensees to file a showing of substantial service at five and ten years into the initial license term. Substantial service is defined as a ''service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal.'' The Commission set forth a safe harbor to serve as a guide to licensees in satisfying the substantial service requirement, as well as additional factors that it would take into consideration in determining whether a licensee satisfies the substantial service standard. Section 101.1440 requires MVDDS licensees to collect information and disclose information to third parties. Therefore, the reporting and disclosure requirements are as follows: Section 101.1440 requires MVDDS licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service. At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee must then provide specific information to the DBS licensee(s). Alternatively, MVDDS licensees may obtain a signed, written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate Equivalent Power Flux Density (EPFD) limits. The DBS licensee must thereafter provide the MVDDS licensee with a list of only those new DBS customer locations that have been *37284 installed in the 30-day period following the MVDDS notification that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmitter site. Section 101.1417 requires MVDDS licensees to file an annual report. The MVDDS licensees must file with the Commission two copies of a ''licensee information report'' by March 1st of each year for the preceding calendar year. This ''licensee information report'' must include name and address of licensee; station(s) call letters and primary geographic service area(s); and statistical data for the licensee's station.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–21941 Filed 10–7–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0853]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid

Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 7, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0853.

Title: Certification by Administrative Authority to Billed Entity Compliance with the Children's internet Protection Act Form, FCC Form 479; Receipt of Service Confirmation and Certification of Compliance with the Children's internet Protection Act Form, FCC Form 486; and Funding Commitment and Adjustment Request Form, FCC Form 500.

Form Numbers: FCC Forms 479, 486 and 500.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents and Responses: 58,500 respondents, 58,500 responses.

Estimated Time per Response: 1 hour for FCC Form 479, 1 hour for FCC Form 486, 1 hour for FCC Form 500, and .75 hours for maintaining and updating the internet Safety Policy.

Frequency of Response: On occasion and annual reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 53,375 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or the Administrator be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval to extend the currently approved requirements contained in this information collection There is a decrease in burden hours of 5,200 hours. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted internet Access services (Category One), and Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Broadband Internal Connections (Basic Maintenance) (known together as Category Two Services) have in place Internet safety policies. Schools and libraries receiving these services must certify, by completing a FCC Form 486 (Receipt of Service Confirmation and Certification of Compliance with the Children's internet Protection Act), that respondents are enforcing a policy of internet safety and enforcing the operation of a technology prevention measure. Also, respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service funding must file FCC Form 486 to indicate their service start date and to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity of their consortium using a FCC Form 479; Certification by Administrative Authority to Billed Entity of Compliance with Children's internet Protection Act, in language consistent with the certifications adopted for the FCC Form 486. Consortia must, in turn, certify collection of the FCC Forms 479 on the FCC Form 486. FCC Form 500 is used by E-rate participants to adjust previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, cancelling or reducing the amount of funding commitments, requesting extensions of the deadline for nonrecurring services, and notifying USAC of equipment transfers. All requirements contained herein are necessary to implement the congressional mandate for universal service.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–21942 Filed 10–7–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than November 8, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Midwest Bancorp, Inc., Chicago, Illinois;* to merge with Bankmanagers Corp. and thereby indirectly acquire Park Bank, both of Milwaukee, Wisconsin.

Board of Governors of the Federal Reserve System, October 3, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–21916 Filed 10–7–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 2:00 p.m. on Thursday, October 10, 2019.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW, Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public website. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public website at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may register online. You may pre-register until close of business on Wednesday, October 9, 2019. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras/recording devices; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Final rules on prudential standards and resolution plan requirements for large domestic and foreign banking organizations and proposed rule on supervisory assessments for large banking organizations.

Notes: 1. The staff memos to the Board will be made available to attendees on the day of the meeting. The documentation package (staff memos to the Board and background materials) will be available on the Board's public website approximately 20 minutes before the start of the meeting. If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public website *http://www.federalreserve.gov/aboutthefed/boardmeetings/.*

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public website at *www.federalreserve.gov* for an electronic announcement. (The website also includes procedural and other information about the open meeting.)

Dated: October 3, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–22029 Filed 10–4–19; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than October 24, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Andrew R. Bosshard, as trustee of the Alexandra Tana Bosshard*

Irrevocable Trust of 2018, the Lindsey Bosshard Irrevocable Trust of 2018, and the Nathan Bosshard-Blackey Irrevocable Bank Trust; The Alexandra Tana Bosshard Irrevocable Trust of 2018; The Lindsey Bosshard Irrevocable Trust of 2018; and the Nathan Bosshard-Blackey Irrevocable Bank Trust, all of LaCrosse, Wisconsin; to be approved as members acting in concert with the Bosshard Family Group to acquire voting shares of Bosshard Financial Group, Inc., and thereby indirectly acquire shares of Oregon Community Bank, Oregon, Wisconsin, and Farmers State Bank of Hillsboro, Hillsboro, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Todd E. Domer and Marilyn K. Domer, both of Topeka, Kansas;* to be approved as members acting in concert with the Domer Family Group to retain voting shares of Spearville Bancshares, Inc., and thereby indirectly retain shares of First National Bank of Spearville, both of Spearville, Kansas.

Board of Governors of the Federal Reserve System, October 3, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–21914 Filed 10–7–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 24, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Cathy E. Sipes, individually, and Jeffrey B. McHenry, both of Fairmount, Indiana, as a group acting in concert;* to retain voting shares of Fairmount Banking Company, and thereby indirectly retain shares of The Fairmount Sate Bank, both of Fairmount, Indiana.

Board of Governors of the Federal Reserve System, October 3, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–21915 Filed 10–7–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 8, 2019.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *First Financial Bancshares, Inc., Abilene, Texas;* to acquire TB&T Bancshares, Inc. and thereby indirectly acquire The Bank & Trust of Bryan/College Station, both of Bryan, Texas.

2. *Oakwood Bancshares, Inc., Dallas, Texas;* to acquire Community Bank of Snyder, Snyder, Texas.

Board of Governors of the Federal Reserve System, October 3, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–21947 Filed 10–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129; Docket No. 2019–0003; Sequence No. 26]

Submission for OMB Review; Cost Accounting Standards Administration

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding Cost Accounting Standards administration.

DATES: Submit comments on or before November 7, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0129, Cost Accounting Standards Administration.

Instructions: All items submitted must cite Information Collection 9000–

0129, Cost Accounting Standards Administration. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0129, Cost Accounting Standards Administration.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the Cost Accounting Standards (CAS) under the Federal Acquisition Regulation (FAR). FAR clause 52.230–6, Administration of Cost Accounting Standards, requires contractors performing CAS-covered contracts to submit notifications and descriptions of certain cost accounting practice changes, including revisions to their Disclosure Statements, if applicable.

The threshold for CAS applicability is required by 41 U.S.C. 1502(b)(1)(B) to be the same as the threshold for requesting certified cost or pricing data at FAR 15.403–4(a)(1). The burden was calculated with data from the Federal Procurement Data System for Fiscal Year 2016 through 2018 using the increased threshold for requesting certified cost or pricing data of $2 million as proposed by FAR Case 2018–005, Modifications to Cost or Pricing Data Reporting Requirements (84 FR 52428), per section 811 of the National Defense Authorization Act for Fiscal Year 2018.

C. Annual Burden

Respondents: 599.
Total Annual Responses: 1,797.
Total Burden Hours: 314,475.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 37875, on August 2, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: October 2, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–21887 Filed 10–7–19; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–ID–2019–01; Docket No. 2019–0002; Sequence No. 27]

Privacy Act of 1974; System of Records

AGENCY: General Services Administration (GSA), Office of Government-Wide Policy (OGP).

ACTION: Notice of a new system of records.

SUMMARY: GSA is publishing this system of records notice (SORN) as the new managing partner of the e-Rulemaking Program, effective October 1, 2019. The e-Rulemaking Program includes the Federal Docket Management System (FDMS) and *Regulations.gov. Regulations.gov* allows the public to search, view, download, and comment on Federal agencies' rulemaking documents in one central location on-line. FDMS provides each participating Federal agency with the ability to electronically access and manage its own rulemaking dockets, or other dockets, including comments or supporting materials submitted by individuals or organizations. GSA is establishing the GSA/OGP–1, e-Rulemaking Program Administrative System to manage *regulations.gov* and partner agency access to the Federal Docket Management System (FDMS).

DATES: The System of Records Notice (SORN) is applicable on October 8, 2019, with the exception of the routine uses. The routine uses will not be effective until November 7, 2019, pending public comment. Comments on the routine uses or other aspects of the SORN must be submitted by November 7, 2019.

ADDRESSES: Submit comments identified by ''Notice–ID–2019–01, Notice of a New System of Records'' by any of the following methods:

- *Regulations.gov: https://www.regulations.gov.* Submit comments via the Federal e-Rulemaking portal by searching for Notice–ID–2019–01, Notice of New System of Records. Select the link ''Comment Now'' that corresponds with ''Notice–ID–2019–01, Notice of New System of Records.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice–ID–2019–01, Notice of New System of Records'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/Notice–ID–2019–01, Notice of New System of Records.

FOR FURTHER INFORMATION CONTACT: Call or email GSA's Chief Privacy Officer: telephone 202–322–8246, or email *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: The e-Rulemaking Program has been managed by the Environmental Protection Agency (EPA). However, based on direction from the Office of Management and Budget (OMB), GSA will be the managing partner of the Program, effective October 1, 2019.

GSA is assuming the role of managing partner and is establishing this system of records to support GSA's management of *regulations.gov* and partner agency access to FDMS. This notice describes how GSA, as managing partner, manages partner agencies' users' credentials. This system of records does not include records pertaining to agency rulemakings (*e.g.,* comments received); partner agencies are responsible for any Privacy Act Notices relevant to their rulemaking materials.

Richard Speidel,

Chief Privacy Officer, Office of the Deputy Chief Information Officer, General Services Administration.

SYSTEM NAME AND NUMBER:

GSA/OGP–1, e-Rulemaking Program Administrative System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Computer Center in Research Triangle Park, North Carolina.

SYSTEM MANAGER(S):

The system manager is the Associate Chief Information Officer of Corporate IT Services in GSA–IT. The business address is: General Services Administration—IC, 1800 F Street NW, Washington, DC 20405.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

e-Government Act of 2002, see 44 U.S.C. 3602(f)(6); see also id § 3501, note.

PURPOSE(S) OF THE SYSTEM:

The purpose of the e-Rulemaking Program Administrative System is to support GSA's management of *regulations.gov* and partner agency access to FDMS. FDMS is used by participating Federal agencies that conduct rulemakings and *regulations.gov* enables Federal agencies to accept public comments electronically. This system of records notice governs the records pertaining to GSA's issuance and management of user credentials to access FDMS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals are partner agency users who register to access FDMS including those agency users who serve as designated partner agency account managers.

CATEGORIES OF RECORDS IN THE SYSTEM:

GSA maintains partner agencies' users' names, government issued email addresses, telephone numbers, and passwords as credentials. In addition, users provide their supervisor's name, telephone number, and government issued email address.

RECORD SOURCE CATEGORIES:

The information in the system may be submitted by users and then approved by partner agencies' designated account manager or directly submitted and approved by a partner agency's designated account manager on behalf of a user.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or portions of the records or information contained in this system may be disclosed to authorized entities on a need to know basis outside GSA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations.

b. To the Office of Personnel Management (OPM), OMB, and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

c. To a Member of Congress or his or her staff in response to a request made on behalf of and at the request of the individual who is the subject of the record.

d. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) GSA or any component thereof, or (b) any employee of GSA in his/her official capacity, or (c) any employee of GSA in his/her individual capacity where DOJ or GSA has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and GSA determines that the records are both relevant and necessary to the litigation.

e. To the National Archives and Records Administration (NARA) for records management purposes.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. In connection with any litigation or settlement discussions regarding claims by or against the GSA, including public filing with a court, to the extent that GSA determines the disclosure of the information is relevant and necessary to the litigation or discussions.

h. To an appeal or grievance examiner, formal complaints examiner, equal opportunity investigator, arbitrator, or other authorized official engaged in investigation or settlement of matters and investigations involving the Merit Systems Protection Board or the Office of Special Counsel.

i. To appropriate agencies, entities, and persons when (1) GSA suspects or has confirmed that there has been a breach of the system of records, (2) GSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, GSA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

j. To another Federal agency or Federal entity, when GSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

k. To a partner agency when GSA determines that information from this system of records is reasonably necessary to assist the recipient agency in managing its access to the system.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

User credentials and associated documentation are stored on secure servers approved by GSA Office of the Chief Information Security Officer (OCISO) and accessed only by authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The e-Rulemaking Program Administrative System retrieves partner agency user credentials using the government-issued email addresses.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records relating to user credentials are subject to GSA's Records Management Program and NARA-approved retention and disposal procedures. When a user account is terminated, records pertaining to that account are maintained for a period of 6 years before disposal.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

The e-Rulemaking Program Administrative System is in a facility protected by physical walls, security guards, and requiring identification badges. Rooms housing the system infrastructure are locked, as are the individual server racks. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance.

There are a limited number of GSA system administrator accounts for the e-Rulemaking Program Administrative System that allow GSA to manage *regulations.gov* and partner agency access to FDMS. Partner agency access to FDMS is managed through designated partner agency account managers, who in turn have access to the system to manage their own agency's user accounts within FDMS.

Each designated partner agency account manager has access to FDMS. This level of access enables them to

establish, manage, and terminate user accounts limited to their own agency.

The GSA system administrator accounts are an additional level of security and management in that they oversee all partner agency accounts, including both designated partner agency account managers and agency users. The GSA system administrator accounts require additional tokens that meet multi-factor authentication standards in accordance with National Institute of Standards and Technology (NIST) standards. The controls assist in restricting access to authorized users who require it for official business purposes. Records in FDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intrusion detection, encryption, identification and authentication of users.

RECORD ACCESS PROCEDURES:

Partner agency users can access and manage their user credentials through their designated partner agency account manager. If an access inquiry is not resolved by the designated partner agency account manager, the partner agency user may contact the GSA system manager listed above. Procedures for requesting access from GSA can be found at 41 CFR part 105–64.4.

CONTESTING RECORD PROCEDURES:

If partner agency users have questions or concerns about their account records, they can contact their designated partner agency account manager. If a question or concern is not resolved by the designated partner agency account manager, a partner agency user may contact the GSA system manager listed above. Procedures for contesting records stored by GSA can be found at 41 CFR part 105–64.4.

NOTIFICATION PROCEDURES:

If partner agency users wish to receive notice about their account records, they can contact their designated partner agency account manager. If not resolved by the designated partner agency account manager, the partner agency user may contact the GSA system manager listed above. Procedures for requesting notice of records stored by GSA can be found at 41 CFR part 105–64.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

N/A.

[FR Doc. 2019–21885 Filed 10–7–19; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032; Docket No. 2019–0003; Sequence No. 30]

Information Collection; Contractor Use of Interagency Fleet Management System Vehicles

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning contractor use of Interagency Fleet Management System Vehicles. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by December 9, 2019.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles.

Instructions: All items submitted must cite Information Collection 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at telephone 202–208–4949, or email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control number, Title, and Any Associated Form(s)

9000–0032, Contractor Use of Interagency Fleet Management System Vehicles.

B. Needs and Uses

Federal Acquisition Regulation (FAR) 51.203 and the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, are to be used in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize, if in the best interest of the Government, the contractor to use IFMS vehicles and related services. Before such an authorization, the contracting officer must have, among other requirements: (1) A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the IFMS vehicles and services not related to the performance of the contract; (2) Evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of an IFMS vehicle; and (3) Considered any recommendations of the contractor.

Authorized contractors shall submit requests for IFMS vehicles and related services in writing to the appropriate GSA point of contact in accordance with the FAR. Contractors' requests must include: (1) Two copies of the agency authorization; (2) The number of vehicles and related services required and period of use; (3) A list of employees who are authorized to request the vehicles or related services; (4) A listing of equipment authorized to be serviced; and (5) Billing instructions and address.

C. Annual Burden

Respondents: 132.
Total Annual Responses: 132.
Total Burden Hours: 132.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles, in all correspondence.

Dated: October 2, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–21886 Filed 10–7–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Inventory for Poliovirus Containment: Minimizing Risk of Poliovirus Release From Laboratories in the United States; Availability

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The United States National Authority for Containment of Poliovirus (NAC), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), announces the availability of the National Inventory for Poliovirus Containment survey. This survey is designed to collect relevant laboratory inventory data to ensure facilities throughout the United States are in compliance with requirements established in the World Health Organization (WHO) Global Action Plan (GAPIII), as adapted for the WHO Region of the Americas. Per GAPIII, each country is required to complete a national inventory of poliovirus-containing materials, including poliovirus potentially infectious materials (PIM).

DATES: The deadline for completion of the survey is December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Lia Haynes Smith, Director, National Authority for Containment of Poliovirus, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–6, Atlanta, GA 30329. Telephone: (404)718–5160.

SUPPLEMENTARY INFORMATION: The survey should be completed by laboratories, storage sites, or other facilities that test, extract, handle, or store biological samples from humans, experimentally infected animals, sewage, or environmental waters. The survey questions are intended to identify facilities that possess any materials that may contain poliovirus. The questions seek to distinguish between potentially infectious materials (PIM) containing wild poliovirus (WPV), circulating vaccine-derived poliovirus (cVDPV), and oral poliovirus vaccine (OPV). PIM includes historical domestic and international specimens, human respiratory secretions, fecal specimens and environmental samples collected for non-polio related work in a time and place where wild poliovirus (WPV) or vaccine-derived poliovirus (cVDPV) was circulating or where oral polio vaccine (OPV) was in use. A table of country-specific poliovirus data can be found at *http://polioeradication.org/wp-content/uploads/2018/11/PIM-Annex-2-16-Nov-18.pdf.* Additionally, PIM cultured in some common cell lines in order to isolate other viruses of interest may have unintentionally amplified poliovirus, so respiratory or enteric viral isolates obtained from PIM specimens using these cell lines are also considered PIM. With the release of the WHO PIM guidance in April 2018, nucleic acid extracted using a validated method and specimens that potentially contain only OPV (OPV PIM), are no longer subject to containment under WHO GAP III. However, they are still considered part of the U.S. inventory and should be reported.

For the purpose of this survey, PIM should be identified based on where and when the specimens were collected, not based on any test results.

If a facility intends to destroy any of the potentially infectious poliovirus material or infectious material it possesses, it must submit material destruction attestation to the NAC. The NAC will send this attestation form to the facility once the completed survey is received.

Although the U.S. no longer immunizes with OPV, poliovirus materials are still present within a limited number of U.S. facilities for public health and virologic research, as well as diagnostic and manufacturing-related purposes. In these essential facilities [poliovirus-essential facilities; PEFs], poliovirus materials will continue to be retained, post-eradication, to serve critical national and international functions. It is crucial that poliovirus materials are appropriately contained under strict biosafety and biosecurity handling and storage conditions to ensure that the virus is not released into the environment, either accidentally or intentionally, to cause outbreaks of the disease in susceptible populations. The risk from a poliovirus reintroduction can be minimized, in part, by ensuring that facilities retaining poliovirus are located in areas with high levels of vaccination coverage. The data collected from this survey will be used to identify facilities with poliovirus materials, to inform poliovirus immunization activities at PEFs including the potential need to immunize particular facility staff, and to identify vaccination coverage estimates for communities surrounding these facilities.

Survey Overview

An overview of the survey questions can be found at *https://www.cdc.gov/cpr/polioviruscontainment/00_docs/SurveyGuidance.pdf.* This overview document is provided to help facilities prepare their survey responses and is not intended to be completed as a paper-based format. The survey must be completed online.

Access to the survey, including appendices and other references, can be found at *https://www.cdc.gov/cpr/polioviruscontainment/NIPC.htm* The time needed to complete the online survey will vary depending on the complexity of a facility and the availability of needed information.

Paperwork Reduction Act

CDC has determined that the information collection activities conducted under this project are exempt from the requirements of the Paperwork Reduction Act (PRA) as they fall under the activities authorized under the National Childhood Vaccine Injury Act (NCVIA) at section 2102(a)(6)–(a)(7) of the Public Health Service Act (42 U.S.C. 300aa–2(a)(6)–(a)(7).

Dated: October 2, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–21864 Filed 10–7–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1722–N]

Medicare Program; Town Hall Meeting on the FY 2021 Applications for New Medical Services and Technologies Add-On Payments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting in accordance with section 1886(d)(5)(K)(viii) of the Social Security Act (the Act) to discuss fiscal year (FY) 2021 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2021 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES: *Meeting Date:* The Town Hall Meeting announced in this notice will be held on Monday, December 16, 2019 and Tuesday December 17, 2019 (the number of new technology applications submitted will determine if a second day for the meeting is necessary; see the **SUPPLEMENTARY INFORMATION** section for details regarding the second day of the meeting and the posting of the preliminary meeting agenda). The Town Hall Meeting will begin each day at 9:00 a.m. Eastern Standard Time (e.s.t.) and check-in will begin at 8:30 a.m. e.s.t.

Deadline for Registration for Participants (not Presenting) at the Town Hall Meeting: The deadline to register to attend the Town Hall Meeting is 5:00 p.m. e.s.t. on Monday, December 9, 2019.

Deadline for Requesting Special Accommodations: The deadline to submit requests for special accommodations is 5 p.m. e.s.t. on Monday, November 25, 2019.

Deadline for Registration of Presenters at the Town Hall Meeting: The deadline to register to present at the Town Hall Meeting is 5 p.m. e.s.t. on Monday, November 18, 2019.

Deadline for Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Written comments and agenda items for discussion at the Town Hall Meeting, including agenda items by presenters, must be received by 5 p.m. e.s.t. on Monday, November 25, 2019.

Deadline for Submission of Written Comments after the Town Hall Meeting for consideration in the FY 2021 IPPS proposed rule: Individuals may submit written comments after the Town Hall Meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by 5:00 p.m. e.s.t. on Friday, January 3, 2020, for consideration in the FY 2021 IPPS proposed rule.

ADDRESSES: *Meeting Location:* The Town Hall Meeting will be held in the main Auditorium in the central building of the Centers for Medicare & Medicaid Services located at 7500 Security Boulevard, Baltimore, MD 21244–1850.

In addition, we are providing two alternatives to attending the meeting in person—(1) there will be an open toll-free phone line to call into the Town Hall Meeting; or (2) participants may view and participate in the Town Hall Meeting via live stream technology or webinar. These options are discussed in section II.B. of this notice.

Registration and Special Accommodations: Individuals wishing to participate in the meeting must register by following the on-line registration instructions located in section III of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Each presenter must submit an agenda item(s) regarding whether a FY 2021 application meets the substantial clinical improvement criterion. Agenda items, written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to *newtech@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Michelle Joshua, (410) 786–6050, *michelle.joshua@cms.hhs.gov;* or Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov.* Alternatively, you may forward your requests via email to *newtech@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Add-On Payments for New Medical Services and Technologies Under the IPPS

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute care hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the fiscal year (FY) 2002 IPPS proposed rule (66 FR 22693, May 4, 2001) and final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.) As finalized in the FY 2020 IPPS/LTCH PPS final rule, technologies which are eligible for the alternative new technology pathway for transformative new devices or the alternative new technology pathway for Qualified Infectious Disease Products do not need to meet the requirement under 42 CFR 412.87(b)(1) that the technology represent an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries. These medical devices or products will also be considered new and not substantially similar to an existing technology for purposes of new technology add-on payment under the IPPS. (See the FY 2020 IPPS/LTCH PPS final rule (84 FR 42292 through 42297) for additional information.)

In the FY 2020 IPPS/LTCH PPS final rule (84 FR 42289 through 42292), we codified in our regulations at § 412.87 the following aspects of how we evaluate substantial clinical improvement for purposes of new technology add-on payments under the IPPS in order to determine if a new technology meets the substantial clinical improvement requirement:

- The totality of the circumstances is considered when making a determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries.
- A determination that a new medical service or technology represents an

advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries means—

++ The new medical service or technology offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments;

++ The new medical service or technology offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods, and there must also be evidence that use of the new medical service or technology to make a diagnosis affects the management of the patient; or

++ The use of the new medical service or technology significantly improves clinical outcomes relative to services or technologies previously available as demonstrated by one or more of the following:

—A reduction in at least one clinically significant adverse event, including a reduction in mortality or a clinically significant complication.

—A decreased rate of at least one subsequent diagnostic or therapeutic intervention (for example, due to reduced rate of recurrence of the disease process).

—A decreased number of future hospitalizations or physician visits.

—A more rapid beneficial resolution of the disease process treatment including, but not limited to, a reduced length of stay or recovery time; an improvement in one or more activities of daily living; an improved quality of life; or, a demonstrated greater medication adherence or compliance.

++ The totality of the circumstances otherwise demonstrates that the new medical service or technology substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

• Evidence from the following published or unpublished information sources from within the United States or elsewhere may be sufficient to establish that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries: Clinical trials, peer reviewed journal articles; study results; meta-analyses; consensus statements; white papers; patient surveys; case studies; reports; systematic literature reviews; letters from major healthcare associations; editorials and letters to the editor; and public comments. Other appropriate information sources may be considered.

• The medical condition diagnosed or treated by the new medical service or technology may have a low prevalence among Medicare beneficiaries.

• The new medical service or technology may represent an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of a subpopulation of patients with the medical condition diagnosed or treated by the new medical service or technology.

Section 1886(d)(5)(K)(viii) of the Act requires that as part of the process for evaluating new medical services and technology applications, the Secretary shall do the following:

• Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.

• Make public and periodically update a list of all the services and technologies for which an application is pending.

• Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

• Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and presentations provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2021. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2021 IPPS proposed rule.

II. Town Hall Meeting Format and Conference Call/Live Streaming Information

A. Format of the Town Hall Meeting

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criterion for the FY 2021 new medical services and technology add-on payment applications. Information regarding the applications can be found on our website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Individuals who would like to present must register and submit their agenda item(s) via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

Depending on the number of applications received, we will determine if a second meeting day is necessary. A preliminary agenda will be posted on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* by November 8, 2019 to inform the public of the number of days of the meeting.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the FY 2021 IPPS proposed rule, the comments must be received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

B. Conference Call, Live Streaming, and Webinar Information

For participants who cannot attend the Town Hall Meeting in person, an open toll-free phone line will be made available. Continue to check our website at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html* for updated dial-in number and instructions.

Also, there will be an option to view and participate in the Town Hall Meeting via live streaming technology or webinar. Information on the option to

participate via live streaming technology or webinar will be provided through an upcoming listserv notice and posted on the New Technology website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Continue to check the website for updates.

C. Disclaimer

We cannot guarantee reliability for live streaming technology or a webinar.

III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration for the Town Hall Meeting on substantial clinical improvement. While there is no registration fee, individuals planning to attend the Town Hall Meeting in person must register to attend.

Registration may be completed on-line at the following web address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Select the link at the bottom of the page ''Register to Attend the New Technology Town Hall Meeting''. After completing the registration, online registrants should print the confirmation page(s) and bring it with them to the meeting.

If you are unable to register on-line, you may register by sending an email to *newtech@cms.hhs.gov.* Please include your name, address, telephone number, email address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend the meeting must register by the date specified in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. If you are attending the Town Hall Meeting in person, we suggest that you arrive at 7500 Security Boulevard no later than 8:30 a.m. e.s.t. so that you will be able to arrive promptly for the meeting.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.

Note: The REAL ID Act established minimum security standards for license issuance and production and prohibits Federal agencies from accepting for certain purposes driver's licenses and identification cards from states not meeting the Act's minimum standards. We encourage the public to visit the DHS website at *https://www.dhs.gov/real-id* prior to the new technology town hall meeting for updated information.

- All Foreign National visitor requests must be submitted 12 business days prior to the scheduled visitor to allow for processing.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought to CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting in person. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in all areas other than the lower level lobby and cafeteria area and first floor auditorium and conference areas in the Central Building. Seating capacity is limited to the first 250 registrants.

Effective June 1, 2018, Federal Protective Services (FPS) has implemented new security screening procedures at all CMS Baltimore locations to align with national screening standards. Please allow extra time to clear security prior to the beginning of the meeting. Employees, contractors and visitors must place all items in bins for screening, including the following:

- Any items in your pockets.
- Belts, hats, jackets & coats (not suit jackets or sport coats).
- Purses, laptop computers, and cell phones.
- Larger items (for example computer bags) can be placed directly onto the conveyer.

In the event the metal detector beeps when you walk through a security guard will run a hand-held metal detector over you—

- If the metal detector does not alarm, you are cleared to enter;
- If the hand-held metal detector alarms, the guard will pat down the area of the body where the metal detector alarmed; or
- If footwear alarms, it will need to be removed and placed in a bin for x-ray screening.

If you believe that you have a disability that will cause you to require reasonable accommodation to comply with the new process, please contact *reasonableaccommodationprogram@cms.hhs.gov* as soon as possible.

Dated: September 26, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–21750 Filed 10–4–19; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is updating an existing system of records maintained by the Centers for Medicare & Medicaid Services (CMS), system No. 09–70–0550, titled ''Medicare Retiree Drug Subsidy Program'' (RDSP), and renaming it ''Retiree Drug Subsidy (RDS), HHS/CMS/CM.'' This system collects and maintains information about individuals who are qualifying covered retirees so that accurate and timely subsidy payments may be made to plan sponsors who continue to offer actuarially equivalent prescription drug coverage to the qualifying covered retirees.

DATES: In accordance with 5 United States Code (U.S.C.) 552a(e)(4) and (11), this notice is applicable October 8, 2019, subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by November 7, 2019.

ADDRESSES: Written comments should be submitted by mail or email to: CMS Privacy Act Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, CMS, Location N1–14–56, 7500 Security Blvd., Baltimore, MD 21244–1870, or *walter.stone@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions may be submitted to: Ivan Iveljic, Health Insurance Specialist, Medicare Plan Payment Group, Center for Medicare, CMS, Mail Stop C1–13–07, 7500 Security Boulevard, Baltimore, Maryland 21244. He can be reached at 410–786–3312 or via email at *Ivan.Iveljic@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Records Covered by System of Records 09–70–0550

This system of records covers records about individual retirees which are used in administering the Retiree Drug Subsidy, which is a program that offers sponsors of qualified retiree prescription drug plans financial assistance with a portion of their prescription drug costs and thereby helps employers retain and enhance their prescription drug coverage so that the current erosion in coverage will plateau or even improve. The program makes a subsidy for 28 percent of allowable prescription drug costs available to qualified retiree prescription drug plans, which significantly reduces financial liabilities associated with employers' retiree drug coverage and encourages employers to continue assisting their retirees with prescription drug coverage.

II. Explanation of Modifications to the System of Records Notice (SORN)

The modifications made to the system of records include the following substantive changes, in addition to reformatting the SORN to comply with OMB Circular A–108, issued December 23, 2016:

- The name of the system of records has changed from ''Medicare Retiree Drug Subsidy Program (RDSP), HHS/CMS/CBC'' to ''Retiree Drug Subsidy (RDS), HHS/CMS/CM.''
- Address information in the System Location and System Manager(s) sections has been updated.
- The Security Classification section has been changed from ''Level Three Privacy Act Sensitive Data'' to ''Unclassified.''
- The Authorities section has been revised to include 31 U.S.C. 7701(c) as authority to collect Social Security Numbers from individuals with whom CMS is ''doing business,'' as defined by the statute.
- The Purpose section has been revised to omit a summary of the routine uses;
- The Categories of Records section has been revised to identify the record categories as enrollment, beneficiary, and financial or payment-related records.
- The list of data elements in the Categories of Records section has been modified to include the Medicare Beneficiary Identifier (MBI), which is a new individual identifier in addition to the Health Insurance Claim Number (HICN).
- The Routine Uses section has been updated to revise three routine uses and add one new routine use:
  - Routine use 2, which authorizes disclosures to members of Congress and their staff for purposes of responding to their requests on behalf of constituents, has been revised to require that their requests be ''written.''
  - Routine use 3, which authorizes disclosures to the Department of Justice (DOJ), court, or adjudicatory body, has been revised to omit unnecessary wording limiting the disclosures to uses ''compatible with the purpose for which the agency collected the records.'' (The wording is unnecessary because it restates the definition of a routine use.)
  - The fraud, waste, and abuse-related routine use added May 29, 2013 is now numbered as routine use 6. It has been revised to add ''which are'' before the words ''defined for this purpose,'' and to omit an unnecessary statement that ''[d]isclosures may include provider and beneficiary-identifiable data.''
  - The two breach response-related routine uses added February 14, 2018 are now numbered as routine uses 7 and 8.
  - Routine use number 9 is new; it authorizes disclosures to the U.S. Department of Homeland Security (DHS) for cybersecurity monitoring purposes in the event that records from this system of records are captured in an intrusion detection system used by HHS and DHS.
- A note at the end of the Routine Uses section has been shortened to remove a portion referring to ''complaints'' and ''complainants'' (which are not involved in this system of records) and to releases of ''not directly identifiable [information], except pursuant to one of the routine uses or if required by law'' (which could create the misimpression that a disclosure required by law need not be authorized by a routine use or another exception to the consent requirement in 5 U.S.C. 552a(b)).
- The Retrieval section has been updated to include the Medicare Beneficiary Identifier (MBI) as an additional personal identifier used for retrieval, and to omit plan sponsor identifier and benefit option identifier, which are not personal identifiers.
- The Records Retention section now cites the applicable disposition authorities, which were revised in 2015, and corrects the retention period, which was previously 15 years and is now seven years (or longer) for enrollment records, ten years (or longer) for beneficiary records, and seven years (or longer) for financial or payment related records.
- In the Access Procedures section, the text has been modified to state that any identifying particulars included in a request would be used to distinguish between subject individuals with the same name, and to include the MBI as an example of an identifying particular.

Barbara Demopulos,

Privacy Advisor, Division of Security, Privacy Policy and Governance, Information Security and Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services.

SYSTEM NAME AND NUMBER:

Retiree Drug Subsidy (RDS), HHS/CMS/CM, System No. 09–70–0550.

SECURITY CLASSIFICATION:

This system of records does not include classified information.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is: Medicare Plan Payment Group, Center for Medicare, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SYSTEM MANAGER:

The System Manager for the system of records is: Director, Medicare Plan Payment Group, Center for Medicare, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, (410) 786–7407.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system is given under section 1860D–22 of the Social Security Act (Title 42 United States Code (U.S.C.) sections 1302, 1395w–101 through 1395w–152, and 1395hh), as amended by section 101 of the Medicare Modernization Act (MMA). The collection of Social Security Numbers is authorized by 31 U.S.C. 7701(c).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain information about individuals who are qualifying covered retirees so that accurate and timely subsidy payments may be made to plan sponsors who continue to offer actuarially equivalent prescription drug coverage to the retirees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information in this system is maintained on qualifying covered retirees who are Medicare Part D eligible individuals covered under a qualified retiree prescription drug plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records are enrollment, beneficiary, and financial or payment related records used to support and calculate the amount of subsidy payments to plan sponsors. They contain information such as the following about each retiree: Standard data for identification such as Plan Sponsor Identification Number, Application Identification Number, Benefit Option Identifier, Coverage Effective Date, Coverage Termination Date, Health Insurance Claim Number (HICN) or Medicare Beneficiary Identifier (MBI), Social Security Number (SSN), gender, first name, last name, middle initial, date of birth, relationship to member, and Medicare eligibility and enrollment status.

RECORD SOURCE CATEGORIES:

Records maintained in this system are derived from the Medicare Beneficiary Database (MBD) system of records, system No. 09–70–0536, and from plan sponsors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

Records about an individual retiree may be disclosed from this system of records to parties outside the Department of Health and Human Services (HHS), without the individual's prior written consent, for the purposes indicated in these routine uses:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To a member of Congress or to a congressional staff member in response to a written inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court, or adjudicatory body when:

a. the agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government, is a party to litigation or has an interest in such litigation and, by careful review, CMS determines that the records are both relevant and necessary to the litigation.

4. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

5. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

6. To disclose to health plans, which are defined for this purpose as plans or programs that provide health benefits, whether directly, through insurance, or otherwise, and include—(1) a policy of health insurance; (2) a contract of a service benefit organization; and (3) a membership agreement with a health maintenance organization or other prepaid health plan when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

7. To appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. To another federal agency or federal entity, when HHS determines that information from this system of record is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

9. To the U.S. Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

The disclosures authorized by publication of the above routine uses pursuant to 5 U.S.C. 552a(b)(3) are in addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4)–(11).

ADDITIONAL PROVISIONS AFFECTING ROUTINE USE DISCLOSURES:

This system contains protected health information as defined by Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR) Parts 160 and 164, 65 **Federal Register** (FR) 82462 (12–28–00), Subparts A and E). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored in hard-copy files and/or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved by the retiree's Health Insurance Claim Number (HICN), Medicare Beneficiary Identifier (MBI), or Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and disposed of in accordance with the following disposition schedules, which were approved by the National Archives and Records Administration (NARA):

• Financial or payment related records are governed by DAA–0440–2015–0004–0001 (Bucket 3). The records retention schedule states: Destroy no sooner than 7 year(s) after cutoff but longer retention is authorized.

• Enrollment Records are governed by DAA–0440–2015–0006 (Bucket 4). The records retention schedule states: Destroy no sooner than 7 year(s) after cutoff but longer retention is authorized.

• Beneficiary Records are governed by DAA–0440–2015–0007–0001 (Bucket 5). The records retention schedule states: Cutoff at the end of the calendar year. Destroy no sooner than 10 year(s) after cutoff but longer retention is authorized.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the CMS Information Security and Privacy Program, *https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/index.html.* Information is safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook; all pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information as a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras, securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours, limiting access to electronic databases to authorized users based on roles and two-factor authentication (user ID and password), using a secured operating system protected by encryption, firewalls, and intrusion detection systems, requiring encryption for records stored on removable media, and training personnel in Privacy Act and information security requirements. Records that are eligible for destruction are disposed of using secure destruction methods prescribed by NIST SP 800–88.

RECORD ACCESS PROCEDURES:

An individual seeking access to a record about him/her in this system of records must submit a written request to the System Manager indicated above. The request must contain the individual's name and particulars necessary to distinguish between records on subject individuals with the same name, such as HICN, MBI or SSN, and should also reasonably specify the record(s) to which access is sought. To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that he/she is the person he/she claims to be and that he/she understands that the knowing and willful request for or acquisition of records pertaining to an individual from an agency under false pretenses is a criminal offense subject to a $5,000 fine.

CONTESTING RECORD PROCEDURES:

Any subject individual may request that his/her record be corrected or amended if he/she believes that the record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function. A subject individual making a request to amend or correct his record shall address his request to the-System Manager indicated, in writing, and must verify his/her identity in the same manner required for an access request. The subject individual shall specify in each request: (1) The system of records from which the record is retrieved; (2) The particular record and specific portion which he/she is seeking to correct or amend; (3) The corrective action sought (*e.g.,* whether he/she is seeking an addition to or a deletion or substitution of the record); and, (4) His/her reasons for requesting correction or amendment of the record. The request should include any supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

Individuals wishing to know if this system contains records about them should write to the System Manager indicated above and follow the same instructions under Record Access Procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

70 FR 41035 (July 15, 2005), *78 FR 32257* (May 29, 2013), *83 FR 6591* (Feb. 14, 2018)

[FR Doc. 2019–21768 Filed 10–7–19; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Head Start (HS) Connects: Individualizing and Connecting Families to Family Support Services (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to conduct semi-structured, qualitative interviews with Head Start staff, parents/guardians, and community providers at six Head Start programs for case studies that explore case management and coordination of family support services.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The case studies proposed as part of the *Head Start (HS) Connects: Individualizing and Connecting Families to Family Support Services* project are intended to build knowledge about how Head Start programs (Head Start or Early Head Start grantees, delegate agencies, and staff) across the country coordinate family well-being services for parents/guardians and tailor coordination processes to individual family needs. The case studies will explore case management and coordination of family support services from multiple perspectives, including from the perspective of Head Start Administrators/Family and Community Partnerships Managers, Family Support Staff, Other Staff, Parents/Guardians, and Community Providers, at each of the six study sites during site visits. The case studies will further inform the development of design options for a large-scale descriptive study of Head Start programs nationally that is focused

on describing how Head Start programs coordinate family support services for parents/guardians.

Respondents: Head Start Administrator/Family and Community Partnerships Manager, Head Start Family Support Staff, Other Head Start Staff, Parents/Guardians, Community Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Head Start Administrator/Family and Community Partnerships Manager pre-visit call	6	1	1	6
Head Start Family Support Staff pre-visit call	18	1	.5	9
Head Start Administrator/Family and Community Partnerships Manager interview	6	1	2	12
Head Start Family Support Staff interview	18	1	2.5	45
Head Start Other Staff interview	18	1	1	18
Parent/Guardian interview	24	1	2	48
Community Providers interview	12	1	1	12

Estimated Total Annual Burden Hours: 150.

Authority: Section 640(a)(2)(D) and section 649 of the Improving Head Start for School Readiness Act of 2007

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–21893 Filed 10–7–19; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Traumatic Brain Injury (TBI) State Partnership Program, OMB approval number 0985–NEW

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to review substantive changes to the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by October 22, 2019.

ADDRESSES: Submit electronic comments on the information collection request to: Dana Fink at *dana.fink@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Dana Fink.

FOR FURTHER INFORMATION CONTACT: Dana Fink, Administration for Community Living, Washington, DC 20201, (202) 795–7604, or *dana.fink@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following Information Collection (IC), ACL published a 60-day **Federal Register** Notice from 11/13/2017–01/12/2018 (Vol. 82, No.217 pp. 52305–52306). ACL received a large volume of substantive stakeholder comments, causing revisions to the IC based on those public comments. The period in publication between the 60-day FRN and 30-day FRN, allowed ACL to thoughtfully review and apply the significant number of substantive public comments to the proposed new TBI IC.

In order to remain compliant with PRA 5 CFR 1320.8(d), ACL has published this **Federal Register** Notice for an abbreviated public comment period prior to publishing a 30-day FRN and submittal to OMB. ACL solicits comments during this abbreviated public comment period regarding: (1) The accuracy of ACL's revised estimate of the burden for the proposed collection of information performance reporting data elements and (2) whether the proposed revisions to the collection of information enhance the quality, utility, and clarity of the information to be collected.

The goal of the federal Traumatic Brain Injury (TBI) State Partnership Program is to help state and local agencies develop resources so all individuals with TBI and their families will have accessible, available, and appropriate services and supports. The TBI State Partnership Program funds the development and implementation of statewide systems that ensure access to TBI related services, including transitional services, rehabilitation, education and employment, and long-term community support. To best monitor, guide, and support TBI State Partnership Program grantees, ACL needs regular information about the grantees' activities and outcomes. The simplest, least burdensome and most useful way to accomplish this goal is to require grantees to submit information as part of their required semiannual reports via the proposed electronic data submission instrument.

In 1996, the Public Health Service Act was amended ''to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes'' (Pub. L. 104–166).

The Health Resources and Services Administration (HRSA), was authorized to ''make grants to States for the purpose of carrying out demonstration projects to improve access to health and other services regarding traumatic brain injury.'' The Children's Health Act of 2000 (Pub. L. 106–310) authorized HRSA to ''develop, change, or enhance community-based service delivery

systems that include timely access to comprehensive appropriate services and supports.'' The Traumatic Brain Injury Act of 2008 (Pub. L. 110–206) provided for the expansion and improvement of traumatic brain injury programs, including funding for HRSA's State Grants for Demonstration Projects Regarding Traumatic Brain Injury. These state grants were reauthorized by the Traumatic Brain Injury Reauthorization Act of 2014 (Pub. L. 113–196) and again by the Traumatic Brain Injury Reauthorization Act of 2018 (Pub. L. 115–377).

While conducting a review of all previous statewide TBI needs and resources assessments, the HRSA determined that four common barriers to accessing care continued to emerge across states and territories. These barriers include: (1) A lack of information of services and supports with little or no assistance in accessing them (information and referral services); (2) a shortage of health professionals who may encounter individuals with TBI but lack relevant training to identify or treat the resulting symptoms, including physicians, nurses, school staff, coaches, athletic trainers, social workers, psychologists, childcare providers, domestic violence/homeless/emergency shelter staff, law enforcement, and assisted living facility personnel (professional training); (3) the absence of a TBI diagnosis, or the assignment of an incorrect diagnosis (screening); and (4) critical TBI services are spread across numerous agencies resulting in services being difficult for families to identify and navigate (resource facilitation).

The proposed performance measures assess progress toward surmounting the aforementioned barriers, while accounting for the varied approaches used across state grantees and are consistent with the TBI State Partnership Program's purpose and ACL's mission.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Comments in Response to the 60-Day Federal Register Notice

Federal Register November 13, 2017 vol. 82, Number 217; pp. 52305–52306. For the complete extensive summary of comments and responses, please visit the ACL website for review. *https://www.acl.gov/about-acl/public-input.*

Summary of Comment Count

(1) Twenty-three (23) individuals provided written comments in response to the proposed new TBI Performance Measures instrument.

(2) Commenters provided feedback on specific reporting instrument questions as well as general suggestions and recommendations for ACL about what grantees should report.

(3) 268 separate comments were made about one or more specific survey questions.

(4) 102 separate comments asked for a definition, further guidance or clarification with regard to terminology used.

(5) 81 comments made a general recommendation, not specific to a particular question.

Estimated Program Burden

These revisions based on public comments caused a change in the annual reporting burden estimates; there is a program change decrease of −1,008 annual burden hours from the 60-day FRN. In addition, the 60-day FRN respondent estimate was based on the highest number of possible awards anticipated; there is an adjustment decrease of −18 respondents.

Adjusted number of respondents	Number of responses (per respondent)	Average burden hours (per response)	Total burden hours
27	2	8	432

60-day FRN number of respondents	Number of responses (per respondent)	Average burden hours (per response)	Total burden hours
45	2	16	1,440

Dated: September 23, 2019.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2019–21906 Filed 10–7–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3728]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Collection of Conflict of Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 7, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Collection of Conflict of Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs.'' Also include the FDA docket number

found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Collection of Conflict of Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

OMB Control Number 0910–NEW

In compliance with 44 U.S.C. 3507, FDA will submit to the Office of Management and Budget a request to review and approve a new collection of information: ''Collection of Conflict of Interest Information for Participation in FDA Non-Employee Fellowship and Traineeship Programs.'' Section 742 (b) of the Food, Drug and Cosmetic Act (21 U.S.C. 379l) allows FDA to conduct and support intramural training programs through fellowship and traineeship programs. These new forms provide the FDA with information about financial investments and relationships from non-employee scientists who participate in FDA fellowship and traineeship programs. Participants in FDA fellowship and traineeship programs will be asked for certain information about financial interests and current relationships: (1) Description of the financial interest; (2) the type of financial interest (*e.g.* stocks, bonds, stock options); (3) if the financial interest is an employee benefit from prior employment; (4) value of financial interest; (5) who owns the financial interest (*e.g.* self, spouse, minor children); (6) employment relationship with an FDA significantly regulated organization (SRO); (7) and service as a consultant to an FDA SRO, and/or proprietary interest(s) in one of more product(s) regulated by FDA, including patent, trademark, copyright, or licensing agreement. The purpose of the financial information is for FDA to determine if there is a conflict of interest between the Fellow's or Trainee's financial and relationship interests and their activities at FDA. The collection of information is mandatory to participate in FDA's fellowship and traineeship programs.

In the **Federal Register** of October 22, 2018 (83 FR 53257), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although two comments were received, they were not responsive to the four collection of information topics solicited.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
Collection Form—Report of Financial Interests and Other Relationships for Non-Employee Scientists at FDA					
Oak Ridge Institute for Science and Education Fellowship	500	1	500	1	500
Traineeship Program	500	1	500	1	500
Reagan-Udall Fellowship at FDA	50	1	50	1	50
Total					1050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

Dated: October 2, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–21839 Filed 10–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Changes to the Scholarships for Disadvantaged Students Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 22, 2019, HRSA published a 30-day notice in the **Federal Register** soliciting feedback on a range of issues pertaining to the Scholarships for Disadvantaged Students (SDS) Program to assist the agency in updating certain SDS policies. HRSA requested feedback on adjusting funding allocations to respond to projected workforce shortages, transitioning data collection from 1 year of data to a 3-year average to demonstrate eligibility, and increasing the maximum scholarship award from $30,000 to $40,000. As a result of HRSA's comprehensive review of existing policies, and taking into consideration the comments received, HRSA is issuing this final notice.

ADDRESSES: Further information on SDS Program is available at *https://bhw.hrsa.gov/loansscholarships/schoolbasedloans/sds.*

FOR FURTHER INFORMATION CONTACT: Denise Sorrell, SDS Project Officer, Division of Health Careers and Financial Support, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Room 15N78, Rockville, Maryland 20857, phone (301) 443–2909, or email *SDSProgram@HRSA.gov.*

SUPPLEMENTARY INFORMATION: SDS Program is authorized by Public Health Service Act (PHS Act) section 737 and administered by HRSA. On May 22, 2019, through a **Federal Register** Notice (Volume 84, Number 99, pp. 23571–23572), HRSA solicited input on proposed SDS policy changes. HRSA received comments on the proposed funding allocation and 3-year data requirement in response to the solicitation for feedback.

Comments on the Proposed Changes to the SDS Program

HRSA received four comments from two nursing associations, one physician assistant association, and one primary care physician assistant program.

Funding Allocation

Summary of Comments

Commenters provided a variety of input on funding allocations among health profession disciplines. One commenter suggested that funding allocated to schools of nursing should be reduced or eliminated. Others expressed concerns that reductions in

funding to schools of nursing would reduce opportunities for associate and bachelor's degree nurses, reduce funding to registered nurses (RNs) to Bachelor of Science in Nursing degree programs, and negatively affect nursing shortages. Additionally, one commenter expressed concern that awarding funding based on projected shortages could be less effective in placing SDS graduates in underserved communities.

Response

Section 740(a) of the PHS Act requires that schools of nursing receive at least 16 percent of SDS funding. The SDS program may fund students pursuing a broad range of health professions careers under its statutory eligibility provisions. HRSA's National Center for Workforce Analysis (NCHWA) which provides HRSA with national health workforce projections, highlights that the inequitable distribution of RNs causing some states to experience an oversupply and others a shortage.[1] Although most states have enough or an oversupply of RNs, seven states will have a shortage of RNs.[2] To address the maldistribution of nurses, HRSA continues to provide funding to academic institutions, community-based organizations, nursing students, and clinicians and faculty through other workforce programs, such as the Nurse Corps Scholarship and Loan Repayment Programs; Nurse Education, Practice, Quality and Retention Program; and the Nursing Workforce Diversity Program. These programs also provide educational opportunities to RNs with associate and bachelor's degrees in nursing. Specifically, the Nurse Corps Scholarship program provides financial assistance to RNs seeking to obtain an associate, bachelor's, or master's degree in nursing. Since the SDS statute authorizes funding a wide range of health professions programs, the SDS program must balance the workforce needs of the nursing professions with those of other health professions. Consequently, allocating funding based on projected health professional shortage data allows SDS to support all health professions as equitably as possible, as demand for certain professions changes over time.

HRSA also remains committed to supporting clinicians in rural and underserved communities. SDS applicants with a record of placing students in medically underserved communities are still eligible to receive a funding priority, and the policy changes outlined in this notice related to funding allocations will not impact the funding priority.

3-Year Data Exception

Summary of Comment

HRSA received one comment regarding allowing an exception to the 3-year data requirement for new health professions programs that have fewer than 3 years of enrollment data but that are otherwise able to demonstrate success in recruiting disadvantaged students.

Response

HRSA has considered this comment and agrees that it could give an unfair advantage to established programs to require 3 years of data from all applicants. To address this concern, as outlined below, the SDS program will allow an exception to this requirement for newly established schools with less than 3 years of data.

SDS Policy Update

The following final policy describes the updates HRSA will be making to the SDS program in order to increase the impact of the program.

1. In an effort to combat workforce shortages, HRSA will distribute SDS funding to award recipients consistent with promoting health professions careers projected to experience the most severe shortages as determined by the NCHWA. Professions that have shortage projections may receive an increased share of SDS, while professions with an oversupply may receive a reduced share of funds. Precise distributions for each competition will be announced in the relevant Notice of Funding Opportunity, which will allow HRSA to ensure program funds are supporting the professions most in need of these awards. Section 740(a) of the PHS Act requires HRSA to distribute at least 16 percent of SDS funding to nursing schools. Section 737 permits the SDS program to fund a broad range of health professions programs. This adjustment of funding will allow HRSA to support the broad range of health professions included in section 737 and to target strategically SDS funding for the health professions with a current or projected workforce shortage. This new policy allows the SDS program to be responsive to changing workforce needs, as well as support programs with a strong record of placing graduates in medically underserved communities.

2. To be eligible for SDS at least 20 percent of the school's full-time enrolled students and graduates must be from a disadvantaged background. Applicants are currently required to provide 1 year of data to demonstrate this eligibility requirement. Beginning with the next grant funding cycle, applicants must provide the average for the most recent 3-year period to demonstrate their eligibility. A 3-year average is a more accurate portrayal of school enrollment patterns than 1 year. This change will allow SDS to support the grantees who have demonstrated a commitment over time to serving students from disadvantaged backgrounds. The SDS program will allow an exception for newly established schools, that is, schools that have not been in existence long enough to have 3 years of enrollment and graduation data. However, these schools will be required to demonstrate that at least 20 percent of the school's full-time students are students from disadvantaged backgrounds, through providing data from 2 years of student enrollment, and at least 1 year of graduation data. Further details about this exception will be provided in the next Notice of Funding Opportunity. Any future changes to the disadvantaged student percentage or data collection period will be announced through the SDS Notice of Funding Opportunity for the relevant grant funding cycle.

3. HRSA has analyzed SDS award data, compared it with performance measures, and discovered that providing amounts to students to cover a substantial portion of their education costs positively correlates with better graduation rates, consistent with the statutory aims. Data suggests the lack of availability or low amounts of scholarships, especially for disadvantaged students, continues to limit educational opportunities for students [3]. SDS last increased its scholarship amount in 2016. Without sufficient financial support, disadvantaged students are much more likely to be unable to complete successfully their education. Based on this understanding and the steady increase in tuition rates nationally, HRSA will increase the maximum

[1] U.S. Department of Health and Human Services, Health Resources and Services Administration, National Center for Health Workforce Analysis. 2017. National and Regional Supply and Demand Projections of the Nursing Workforce: 2014–2030. Rockville, Maryland. Available at: *https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/NCHWA_HRSA_Nursing_Report.pdf.*

[2] Ibid.

[3] ''Indicators of Higher Education Equity in the United States.'' The Pell Institute for the Study of Opportunity in Higher Education, Penn Ahead-Alliance for Higher Education and Democracy (2015): 1–60. *http://www.pellinstitute.org/downloads/publications-Indicators_of_Higher_Education_Equity_in_the_US_45_Year_Trend_Report.pdf.*

scholarship award to $40,000 per student, to ensure the SDS program will continue to impact students who receive the awards and ensure their success in completing the program. HRSA also reserves the right to adjust the scholarship award amount as necessary to reflect future increases in tuition rates nationwide and will announce any such changes in the Notice of Funding Opportunity for the relevant funding cycle.

HRSA will announce any future administrative changes to the SDS program through the relevant Notice of Funding Opportunity.

Dated: September 30, 2019.

Thomas J. Engels,

Acting Administrator.

[FR Doc. 2019–21903 Filed 10–7–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Single Source Award to the Telehealth Focused Rural Health Research Center

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services

ACTION: Notice.

SUMMARY: In FY 2019, HRSA provided $788,000 in additional funding to The University of Iowa for the Telehealth Focused Rural Health Research Center and extended the project period for 12 months.

FOR FURTHER INFORMATION CONTACT: Sarah Heppner, Program Coordinator, Telehealth Focused Rural Health Research Center, (301) 443–5982, *SHeppner@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: The University of Iowa (U1CRH29074).

Amount of Award: $788,000.

Project Period: September 1, 2019–August 31, 2020.

CFDA Number: 93.155.

Authority: Title VII, § 711 of the Social Security Act (42 U.S.C. 912), as amended.

Justification: The primary goal of the Telehealth Focused Rural Health Research Center (Research Center) Program is to increase the amount of publically available, high quality, impartial, clinically informed, and policy-relevant research related to telehealth. This research assists rural health providers and decision-makers at the federal, state, and local levels by contributing to the policy-relevant evidence base of telehealth services. This program was competed under announcement HRSA–15–149 and awarded to the University of Iowa for a four-year period of performance (September 1, 2015 to August 31, 2019).

In FY 2019 HRSA extended the current project period for 12 months and provided $788,000 to the awardee. The new period of performance started on September 1, 2019, and will end on August 31, 2020. Under its current scope, the Research Center supports several cohorts of HRSA's Telehealth Network Grant Program (TNGP) recipients. HRSA extended the current project period for 12 months and provided supplemental funding to allow additional time to analyze outcomes from the TNGPs and align efforts between the Research Center and the design of the next TNGP cohort. The $788,000 of supplemental funding for this awardee aligned with the historical funding levels for this program.

Further information on the Telehealth Focused Rural Health Research Center is available at: *https://www.hrsa.gov/ruralhealth/programopportunities/fundingopportunities/default.aspx?id=482de32c-8b8d-4960-bb86-caad8c9d6905*.

Dated: September 30, 2019.

Thomas J. Engels,

Acting Administrator.

[FR Doc. 2019–21904 Filed 10–7–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel Training Program.

Date: October 28, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Sequencing Technology.

Date: November 13–14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research, Institute National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306 Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel ELSI CEER.

Date: November 14, 2019.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Genomic Community Resource.

Date: November 18, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306 Rockville, MD 20852, 301–402–0838 *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 2, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21853 Filed 10–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with Sury Vepa, Ph.D., J.D., Senior Licensing and Patenting Manager, National Center for Advancing Translational Sciences, NIH, 9800 Medical Center Drive, Rockville, MD 20850, Phone: 301–827–7181, or email *sury.vepa@nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Inhibitors of Phosphoinositide 3-Kinase and Histone Deacetylase for Treatment of Cancer

Description of Technology: The invention includes compounds that act as dual inhibitor of phosphoinositide 3-kinase (PI3K) and histone deacetylase (HDAC), including a core containing a quinazoline moiety or a quinazolin-4(3H)-one moiety, a kinase hinge binding moiety, and a histone deacetylase pharmacophore, a pharmaceutically acceptable salt thereof, a prodrug thereof, or solvate thereof. The present invention also provides compounds that are selective inhibitors of histone deacetylase inhibitor that include a core containing a quinazolin-4(3H)-one moiety and a histone deacetylase pharmacophore.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

• Novel therapeutics for cancers neurodegenerative diseases.

Competitive Advantages:

• Novel dual inhibitor compounds of this invention have a commercial advantage over those currently known because they can act as selective and dual inhibitors of specific isoforms of HDAC (such as HDAC6) and PI3K (such as PI3Kδ) potentially providing better toxicity profile and therefore bigger therapeutic window.

Development Stage:

• Pre-Clinical (compound optimization and in vivo validation).

Inventors:

• Grewal, Gurmit; Thakur, Ashish; Tawa, Gregory James; Ferrer, Marc; and Simeonov, Anton M.

Intellectual Property: 1. INHIBITORS OF PHOSPHOINOSITIDE 3–KINASE AND HISTONE DEACETYLASE FOR TREATMENT OF CANCER, PCT Patent Application NO. PCT/US2018/038507 filed on June 20, 2018 (HHS Ref. No. E–104–2017).

Licensing Contact: Sury Vepa, Ph.D., J.D. Phone: 301–827–7181, or email *sury.vepa@nih.gov.*

Dated: October 1, 2019.

Lillianne M. Portilla Weingarten,

Technology Development Coordinator, National Center for Advancing Translational Sciences.

[FR Doc. 2019–21965 Filed 10–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Drug Screening with Bio Fabricated 3–D Skin Disease Tissue Models.

Date: October 23, 2019.

Time: 2:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing, Translational Sciences, 6701 Democracy Blvd., Rm 1078, Bethesda, MD 20892, 301–894–7319, *khanr2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 2, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21851 Filed 10–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel on Pediatric Trauma and Injury Prevention, which was published in the **Federal Register** on September 25, 2019, 84 FR 50460.

This meeting's location and format has changed from an in-person meeting at the Residence Inn, Bethesda MD to an IAT/Teleconference meeting at 6710B Rockledge Dr., Bethesda MD. The meeting is closed to the public.

Dated: October 2, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21850 Filed 10–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Genes, Genomes and Genetics.

Date: October 31–November 1, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.

Date: October 31–November 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Cibu P Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20894, 301–435–1042, *thomascp@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–17–169: Biomarkers: Bridging Pediatric and Adult Therapeutics.

Date: October 31, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Investigations on Primary Immunodeficiency Diseases/Inborn Errors of Immunity.

Date: October 31, 2019.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel U.S.-South Africa Program for Collaborative Biomedical Research—Phase 2 (HIV/AIDS).

Date: November 1, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group Genetics of Health and Disease Study Section.

Date: November 4–5, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3702, *christopher.payne@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Topics in Bacterial Pathogenesis.

Date: November 4, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Richard G Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–19–222: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21 Clinical Trial Optional).

Date: November 5, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel: The Blood-Brain Barrier, Neurovascular System and CNS Therapeutics.

Date: November 5, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Shared and High-End Instruments: NMR and Crystallography.

Date: November 5, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21845 Filed 10–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Computing and Health Informatics Study Section, October 10, 2019, 8:00 a.m. to October 11, 2019, 6:00 p.m. at the Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda MD 20814, which was published in the **Federal Register** on September 10, 2019, 84 FR 47528.

The Contact Person for this meeting has been changed to Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda MD, 20892, (301) 594–9088, *karen.nieveslugo@nih.gov.* The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: October 2, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21849 Filed 10–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19XL1109AF LLUT925000–L14400000–BJ0000–241A]

Notice of Filing of Plats of Survey; Utah

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Filing of Plats of Survey; Utah

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM Utah State Office, Salt Lake City, Utah, 30 calendar days from the date of this publication.

DATES: A person or party who wishes to protest one or more of the plats of survey must file a written notice by November 7, 2019.

ADDRESSES: Written notices protesting this survey must be sent to the Utah State Director, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345.

FOR FURTHER INFORMATION CONTACT: Daniel W. Webb, Chief Cadastral Surveyor for Utah, Bureau of Land Management, Branch of Geographic Sciences, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345, telephone (801) 539–4135, or email *dwebb@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs. The lands surveyed are:

Salt Lake Meridian, Utah

T. 40 S., R. 21 E.,

The dependent resurvey of a portion of the south boundary (Eighth Standard Parallel South), a portion of the subdivisional lines, the subdivision of sections 25, 33, and 34, the survey of a portion of the subdivisional lines, the survey of a portion of the present meanders of the right and left banks, and the informative traverse of a portion of the right bank of the San Juan River, accepted August 21, 2019, Group No. 1150, Utah.

T. 40 S., R. 22 E.,

The dependent resurvey of the south boundary (Eighth Standard Parallel South), a portion of the east boundary (Colorado Guide Meridian), a portion of the west boundary, a portion of the subdivisional lines, and a portion of the subdivision of section 30, and the survey of a portion of the subdivisional lines, and the survey of a portion of the present meanders of the right and left banks of the San Juan River, accepted August 21, 2019, Group No. 1150, Utah.

Copies of the plats and related field notes will be placed in the open files. They will be available for public review in the BLM Utah State Office as a matter of information.

A person or party who wishes to protest one or more of the above surveys must file a written notice within 30 calendar days from the date of this publication with the Utah State Director, Bureau of Land Management, at the address listed in the **ADDRESSES** section, stating that they wish to protest. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. A statement of reasons for the protest, if not filed with the notice of protest, must be filed with the Utah State Director within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Daniel W. Webb,

Chief Cadastral Surveyor for Utah.

[FR Doc. 2019–21952 Filed 10–7–19; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0001; DS63644000 DRT000000.CH7000 201D1113RT; OMB Control Number 1012–0010]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Solid Minerals and Geothermal Collections

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Natural Resources Revenue (ONRR) is proposing to renew an information collection with revisions. ONRR seeks renewed authority to collect information through four forms that lessees use to report the production and royalties on solid minerals and geothermal resources produced from Federal and Indian lands.

DATES: Interested persons are invited to submit written comments on or before November 7, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email to *OIRA_Submission@omb.eop.gov* or facsimile to (202) 395–5806. Please provide a copy of your comments to Mr. Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64400B, Denver, Colorado 80225–0165, or by email to *Armand.Southall@onrr.gov.* Please reference ''OMB Control Number 1012–0010'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Anspach, Solid Minerals, ONRR, at (303) 231–3618, or email to *Michael.Anspach@onrr.gov.* You may also review the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We published a notice, with a 60-day public comment period soliciting comments on this collection of information, in the **Federal Register** on May 7, 2019 (84 FR 19946). During the 60-day period, we specifically reached out to seven companies impacted by this ICR to request input. In response to the outreach, we received five responsive comments.

The first comment we received stated:

I have read ***Federal Register*** *(84 FR 19946, May 7, 2019). I have no comments at this time.*

The second comment we received stated:

I have read through the ***Federal Register*** *notice that you have provided and have no official comments to report.*

The third comment we received stated:

The entry of data into the system is cumbersome and with today's technology there should be a way to import our information into the system. Working within the restraints of the system tends to add additional time to any task. The constraints of a single PAR a day submission is difficult to work with. Overall system reliability seems to cause several down times that can make submission difficult.

The fourth comment we received stated:

I have read the ***Federal Register*** *notice regarding OMB Control No. 1012–0010, Solid Minerals Collections. In section I. Abstract, OMB Approval it states* ''*We protect the proprietary information that ONRR receives and do not collect items of a sensitive nature*''*. I agree with the first half of this sentence, however ONRR does collect items of a sensitive nature which are listed in section A. Solid Minerals. Thank you.*

The fifth comment we received stated:

A company provided adjustments to the following parts and sections of the Respondents' Estimated Annual Burden Hours Chart:

Part 1210—Forms and Reports; Subpart E—Solid Minerals, General

§ 1210.201: Hour burden—0.5 hour; Average number of annual responses—12; Annual burden hours—6 hours.

§ 1210.202: Hour burden—0.5 hour; Average number of annual responses—12; Annual burden hours—6 hours.

§ 1210.205: Hour burden—0.5 hour; Average number of annual responses—12; Annual burden hours—6 hours.

Part 1218—Collection of Royalties, Rentals, and Bonuses, and Other Monies Due the Federal Government; Subpart F—Geothermal Resources

§ 1218.300: Hour burden—2 hours; Average number of annual responses—2; Annual burden hours—4 hours.

§ 1218.306(a): Hour burden—3 hours; Average number of annual responses—3; Annual burden hours—9 hours.

§ 1218.306(b): Hour burden—2 hours; Average number of annual responses—12; Annual burden hours—24 hours.

Once again, we are soliciting comments on this proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to execute ONRR's proper functions; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden hours accurate; (4) how might ONRR enhance the quality, usefulness, and clarity of the information collected; and (5) how might ONRR minimize the burden of this collection on the respondents, including the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your personally identifiable information (PII), such as your address, phone number, email address, or other PII in your comment(s), you should be aware that your entire comment, including PII, may be made available to the public at any time. While you can ask us, in your comment, to withhold your PII from public view, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Also, the Secretary is responsible for collecting royalty information from lessees who produce minerals from Federal and Indian lands and the OCS. Under various laws, the Secretary's responsibility is to (1) manage mineral resources production from Federal and Indian lands and the OCS; (2) collect the royalties and other mineral revenues due; and (3) distribute the funds collected. We have posted the laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

You can find the information collections covered in this ICR at 30 CFR parts:

- 1202, subpart H, which pertains to geothermal resources royalties.
- 1206, subparts F, H, and J, which pertain to product valuation of Federal coal, geothermal resources, and Indian coal.
- 1210, subparts E and H, which pertain to production and royalty reports on solid minerals and geothermal resources leases.
- 1212, subparts E and H, which pertain to recordkeeping of reports and files for solid minerals and geothermal resources leases.
- 1217, subparts E, F, and G, which pertain to audits and inspections of coal, other solid minerals, and geothermal resources leases.
- 1218, subparts E and F, which pertain to royalties, rentals, bonuses, and other monies payment for solid minerals and geothermal resources.

All data reported is subject to subsequent audit and adjustment.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and sell, or otherwise dispose of, minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee, or its designee, must report various kinds of information to the lessor related to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals.

Information Collections

ONRR, acting for the Secretary, uses the information we collect to ensure that lessees accurately value and appropriately pay all royalties and other mineral revenues due based on the correct product valuation. ONRR and other Federal government entities, including the Bureau of Land Management, the Bureau of Indian Affairs, and State and Tribal governmental entities, use the information for audit purposes and for evaluating the reasonableness of product valuation or allowance claims that lessees submit. Please refer to the burden hour chart for all reporting requirements and associated burden hours.

A. Solid Minerals

Producers of coal and other solid minerals from any Federal or Indian lease must submit the Solid Minerals Production and Royalty Report (form ONRR–4430) and other associated data formats such as the Solid Minerals Sales Summary (form ONRR–4440). These companies also report certain data on the Report of Sales and Royalty Remittance (form ONRR–2014) (OMB Control Number 1012–0004). Producers of coal from any Indian lease must also submit the Coal Washing Allowance Report (form ONRR–4292) and the Coal Transportation Allowance Report (form ONRR–4293), if they wish to claim allowances on form ONRR–4430. The information that ONRR requests is the minimum necessary to carry out our mission and places the least possible burden on respondents.

B. Geothermal Resources

This ICR also covers some of the information collections for geothermal resources, which ONRR groups by usage (electrical generation, direct use, and byproduct recovery), and by disposition of the resources (arm's-length (unaffiliated) contract sales, non-arm's-length contract sales, and no contract sales) within each use group. ONRR relies primarily on data that payors report on form ONRR–2014 for the majority of our business processes, including geothermal information. In addition to using the data to account for royalties that payors report, ONRR uses the data for monthly distribution of mineral revenues and for audit and compliance reviews.

Revisions to ICR

In March 2019, the U.S. District Court for the Northern District of California vacated ONRR's 2017 repeal of its 2016 Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Rule (2016 Valuation Rule). By vacating ONRR's 2017 repeal, the Court reinstated ONRR's 2016 Valuation Rule, originally published on July 1, 2016 (81 FR 43338), with its original effective date of January 1, 2017.

This is an ICR with revisions because it takes into account the 2016 Valuation Rule, which amended ONRR's Federal and Indian coal valuation regulations. This ICR requires revisions to note changes to its authority when the final rule amended 30 CFR part 1206, subparts F and J. The two changes relevant to this ICR are that ONRR: (1) Simplified and improved the valuation of coal disposed of in a non-arm's-length transaction and no-sale situations; and (2) eliminated benchmarks for valuation of non-arm's-length coal sales.

OMB Approval

We will request OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the loss of royalty payments. We protect the proprietary information that ONRR receives and do not collect items of a sensitive nature. Reporters must submit forms ONRR–4430 and ONRR–4440. Also, ONRR requires that reporters submit forms ONRR–4292 and ONRR–4293 to claim allowances on form ONRR–4430.

Data

Title of Collection: Solid Minerals and Geothermal Collections—30 CFR parts 1202, 1206, 1210, 1212, 1217, and 1218.

OMB Control Number: 1012–0010.

Form Numbers: ONRR–4292, ONRR–4293, ONRR–4430, and ONRR–4440.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 100 reporters.

Total Estimated Number of Annual Responses: 9,422.

Estimated Completion Time per Response: The average completion time is 24.65 minutes per response. The average completion time is calculated by first multiplying the estimated annual burden hours from the table below (3,871) by 60 minutes to obtain the total annual burden minutes (232,260). Then the total annual burden minutes (232,260) is divided by the estimated annual responses (9,422) from the table below.

Total Estimated Number of Annual Burden Hours: 3,871 hours.

Respondent's Obligation: The records maintenance and the filing of forms ONRR–4430 and ONRR–4440 are mandatory. The filing of forms ONRR–4292 and ONRR–4293, and the submission of solid minerals and geothermal resource information that do not have an ONRR form, are required to obtain or retain a benefit.

Frequency of Collection: Monthly, annually, and on occasion.

Total Estimated Annual Nonhour Burden Cost: We have identified no ''nonhour cost'' burden associated with this collection of information.

We have not included in our estimates certain requirements companies perform in the normal course of business that ONRR considers usual and customary. We displayed the estimated annual burden hours by CFR section and paragraph in the following chart.

SUMMARY OF INFORMATION COLLECTIONS

Information collections (and 30 CFR references*)	Requirement to respond	Frequency of response	Number of annual responses	Annual burden hours
1. Reporting Formats:	Mandatory	Monthly	3,579	1,531
• Form ONRR–4430, Solid Minerals Production and Royalty Report,				
• Associated Data (facility data) [1206.258(a), 1206.262, 1206.263(a), 1206.264, 1206.268(c)(1) & (2), 1206.269(h)(1), 1206.270(a), 1206.271(a), 1206.451(a) & (b), 1206.455, 1206.458(a), 1210.201, 1210.203, 1210.204, 1218.201, 1218.203]				
• Form ONRR–4440, Solid Minerals Sales Summary [1201.202]	Mandatory	Monthly	900	900
2. Allowance Forms:	Required to obtain a benefit.	Annually and on occasion.	5	8
• Form ONRR–4292, Coal Washing Allowance Report [1206.467(a)(2), 1206.469(h)(1), 1206.470(d)(1), 1206.471(c)(1)]				
• Form ONRR–4293, Coal Transportation Allowance Report [1206.460(a)(2), 1206.461(c)(1), 1206.462(h)(1), 1206.464(c)(1) & (e), 1206.464(c)(3)(i) & (ii)]			6	7
3. Geothermal Resources [1206.353(g), 1206.354(b)(1)(ii), 1206.354(g), 1206.356(a)(3), 1206.356(c), 1206.359(g), 1206.364(a)(1); 1210.352; 1218.306(a)(2)].	Mandatory	On occasion	48	62
4. Recordkeeping [1206.251(a), (b), & (d), 1206.253(g)(1), 1206.453(g)(1); 1212.200(a)].	Mandatory	As requested	4,884	1,363

SUMMARY OF INFORMATION COLLECTIONS—Continued

Information collections (and 30 CFR references*)	Requirement to respond	Frequency of response	Number of annual responses	Annual burden hours
Total			9,422	3,871

Note: Audit Process—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

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.

Authority: Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2019–21863 Filed 10–7–19; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2019–0004]

Notice of Availability of the Proposed Notice of Sale for Gulf of Mexico Outer Continental Shelf Oil and Gas Region-Wide Lease Sale 254

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of the proposed notice of sale for Gulf of Mexico Outer Continental Shelf Oil and Gas Region-wide Lease Sale 254.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the Proposed Notice of Sale (NOS) for the proposed Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Oil and Gas Region-wide Lease Sale 254 (GOM Region-wide Sale 254). BOEM is publishing this Notice pursuant to its regulatory authority. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the Outer Continental Shelf Lands Act, provides governors of affected states the opportunity to review and comment on the Proposed NOS. The Proposed NOS describes the proposed size, timing, and location of the sale, including lease stipulations, terms and conditions, minimum bids, royalty rates, and rental rates.

DATES: Governors of affected states may comment on the size, timing, and location of proposed GOM Region-wide Sale 254 within 60 days following their receipt of the Proposed NOS. BOEM will publish the Final NOS in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 18, 2020.

ADDRESSES: The Proposed NOS for GOM Region-wide Sale 254 and Proposed NOS Package containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394; telephone: (504) 736–2519. The Proposed NOS and Proposed NOS Package also are available for downloading or viewing on BOEM's website at *http://www.boem.gov/Sale-254/.*

FOR FURTHER INFORMATION CONTACT: Bernadette Thomas, Regional Supervisor, Office of Leasing and Plans, 504–736–2596, *Bernadette.Thomas@boem.gov* or Wright Jay Frank, Chief, Leasing Policy and Management Division, 703–787–1325, *Wright.Frank@boem.gov.*

Authority: 43 U.S.C. 1345 and 30 CFR 556.304(c).

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2019–21907 Filed 10–7–19; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–13]

Recommended Modifications in the Harmonized Tariff Schedule

AGENCY: U.S. International Trade Commission.

ACTION: Notice of institution of investigation.

SUMMARY: The U.S. International Trade Commission (Commission) has instituted Investigation No. 1205–13, *Recommended Modifications in the Harmonized Tariff Schedule, 2020,* pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3005), in order to recommend to the President such modifications in the Harmonized Tariff Schedule of the United States (HTS) as the Commission considers necessary or appropriate concerning; the World Customs Organization's (WCO) Recommendation of June 28, 2019 that Contracting Parties to the International Convention on the Harmonized Commodity Description and Coding System (Convention) modify their tariff schedules to conform with amendments to the Harmonized System expected to enter into force on January 1, 2022; and the HTS nomenclature for blanched peanuts to conform the HTS with a recent WCO classification opinion.

DATES:

October 1, 2019: Posting of the WCO's Recommendation of June 28, 2019, on the Commission website.

March 2020 (actual date to be announced later): Posting of the Commission's proposed recommendations on the Commission's website.

April 2020 (actual dates to be announced later): Scheduling of a public hearing and setting out dates by which interested Federal agencies and the public must file any written views with the Commission on the Commission's proposed recommendations.

September 2020 (actual date to be announced later): Transmittal of the Commission's report to the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (EDIS) at *https://edis.usitc.gov/internal/.*

FOR FURTHER INFORMATION CONTACT: Daniel P. Shepherdson, Attorney-Advisor, Office of Tariff Affairs and Trade Agreements ((202) 205–2598, or *Daniel.Shepherdson@usitc.gov*) or Vanessa Lee, Nomenclature Analyst, Office of Tariff Affairs and Trade Agreements ((202) 205–2053, or

Vanessa.Lee@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations ((202) 205–1819, or *Margaret.OLaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information about the Commission is available by accessing the Commission website at *https://www.usitc.gov/*. 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.

Background: Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3005(a)) requires that the Commission keep the Harmonized Tariff Schedule of the United States (Harmonized Tariff Schedule or HTS) under continuous review and periodically recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to conform the HTS with amendments made to the International Convention on the Harmonized Commodity Description and Coding System (Convention), which contains the Harmonized System nomenclature in the Annex to the Convention.

On June 28, 2019, the WCO adopted recommended amendments to the Harmonized System nomenclature that are scheduled to enter into force on January 1, 2022. The amendments are the sixth in a series of such amendments and are part of the WCO's ongoing program of periodically reviewing and updating the Harmonized System nomenclature. The Commission has posted a copy of the WCO amendments on its website at *https://www.usitc.gov/*. The Commission will recommend to the President such modifications in the HTS as it considers necessary or appropriate to conform the HTS with such amendments.

As part of this investigation, the Commission will also consider whether it is necessary or appropriate to recommend a modification to the HTS nomenclature for blanched peanuts to conform the HTS with a 2018 opinion of the WCO's Harmonized System Committee, which classified certain blanched peanuts in heading 1202 of the Harmonized System. Before the WCO opinion, Customs and Border Protection (CBP) had consistently classified blanched peanuts in heading 2008 based in part on an HTS subheading in chapter 20 that provided for blanched peanuts.

An up-to-date copy of the HTS, which incorporates the Harmonized System in its overall structure, is available on the Commission's website at *https://www.usitc.gov/*.

Proposed Recommendations, Opportunity to Comment: In preparing its recommended modifications, the Commission will prepare proposed recommendations and then provide an opportunity to interested Federal agencies and the public to present their views in writing and/or at a public hearing on those proposed recommendations. The Commission expects to post the proposed recommendations on its website in March 2020, and will publish a notice in the **Federal Register** at that time providing notice of their availability and the procedures for filing written views, including the date by which such written views must be filed. To assist the public in understanding the proposed changes and in developing comments, the Commission will include, with the proposed recommendations, a non-authoritative cross-reference table linking the proposed tariff codes to the corresponding current tariff codes. Persons using the cross-reference table should be aware that the cross-references shown are subject to change during the course of the investigation.

Recommendations to the President: The Commission will submit its recommended modifications to the President in the form of a report that will include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also will include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties. The Commission expects to submit that report in September 2020.

By order of the Commission

Issued: October 1, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21742 Filed 10–7–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 008–2019]

Privacy Act of 1974; System of Records

AGENCY: Office of Justice Programs, United States Department of Justice.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Office of Justice Programs (OJP), a component within the United States Department of Justice (Department or DOJ), proposes to modify a system of records notice titled Public Safety Officers' Benefits System, JUSTICE/OJP–012. The Department proposes to modify the Public Safety Officers' Benefits system of records as well as make editorial revisions to earlier notices for the system.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Therefore, please submit any comments within November 7, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 2 Constitution Square, 8W.300, 145 N Street NE, Washington, DC 20002, by facsimile at (202) 307–0693, or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above-listed CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Hope Janke, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW, Washington, DC 20531; *AskPSOB@usdoj.gov;* (888) 744–6513.

SUPPLEMENTARY INFORMATION: The purpose of the PSOB Program is to provide: Death benefits to eligible statutory survivors of fallen law enforcement officers, firefighters, and other public safety officers; disability benefits to public safety officers catastrophically injured in the line of duty; and benefits in the form of educational assistance to spouses and children of public safety officers who were killed or catastrophically injured in the line of duty.

The Department is updating the system of records notice for JUSTICE/OJP–012, last published in its entirety in the **Federal Register** at 64 FR 25070 (May 10, 1999), and amended at 66 FR

8425 (Jan. 31, 2001) and 82 FR 24147 (May 25, 2017). First, the Department is making certain non-substantive editorial changes for JUSTICE/OJP–012, including: Updating the position title of the system's manager; re-ordering the routine uses by listing the routine uses specific to this system of records first, followed by the Department's model routine uses; updating the ''Authority for Maintenance of the System'' to reflect the reorganization of the United States Code's sections for the PSOB Act from Title 42 to Title 34; and making other non-substantive editorial and conforming changes, such as revising the titles for sections related to the purposes, storage, retrieval, retention, disposal and safeguards of records covered by this system.

Second, the Department is making substantive changes to JUSTICE/OJP–012 including: Updating the security classification for the system; clarifying certain descriptions of categories of records, individuals, and sources contained in the system; and revising and adding routine uses to more accurately describe the entities to, or circumstances under, which OJP may disclose information covered by this system. Examples of the changes to the routine uses of the records in the system include: (1) Adding a routine use that allows OJP to disclose to one claimant minimal relevant information from the records pertaining to another claimant in situations where—(a) the claims are or could be adverse; and (b) disclosure of the records would (or could) assist—(i) any such claimant in establishing his claim, or (ii) OJP in adjudicating any such claim; (2) revising the routine use related to disclosure of information to researchers by requiring approval by the Director of the Bureau of Justice Assistance, while allowing a broader scope of research to be conducted; and (3) adding a routine use that allows OJP to disclose records to appropriate governmental and professional organizational bodies when there is good cause to question the legality or ethical propriety of the actions of a claimant's representative during the pendency of a claim.

The entire notice incorporating the new modifications is being republished for the convenience of the public.

28 CFR pt. 32 and 83 FR 22367 provide the eligibility requirements and procedures for the submission and consideration of claims under the PSOB Program. More detailed information regarding the PSOB Program is available on the PSOB Program's website at *www.psob.gov.*

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: September 30, 2019.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/OJP–012

SYSTEM NAME AND NUMBER:

Public Safety Officers' Benefits System, JUSTICE/OJP–012.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records will be located at the Bureau of Justice Assistance (BJA), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), 810 Seventh Street NW, Washington, DC 20531, and at appropriate locations for system backup and continuity of operations purposes. Records may also be maintained in secure cloud computing environments. The cloud computing service provider on the date of this publication is Microsoft Corporation, located at One Microsoft Way, Redmond, WA 98052. Cloud computing service providers may change. For information about the current cloud computing service provider, please contact the Bureau of Justice Assistance at the address above; telephone (202) 616–6500.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the Public Safety Officers' Benefits (PSOB) Office, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 34 U.S.C. Subt. I, Ch. 101, Subch. XI; Public Law 107–37, as amended; and 44 U.S.C. 3103.

PURPOSE(S) OF THE SYSTEM:

These records are collected or generated for the purpose of adjudicating claims under the program established by the Public Safety Officers' Benefits Act, and related statutes, including the resolution of disputes over eligibility or payment of benefits to claimants; for providing a claimant's contact information to entities and persons that provide national peer support and counseling programs to families of public safety officers who have sustained a fatal or catastrophic injury in the line of duty; and for research purposes approved by the BJA Director that are consistent with the mission of the PSOB program (including, without limitation, purposes related to the cause and prevention of public safety officer line-of-duty deaths and catastrophic injuries).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those individuals claiming eligibility for program benefits in accordance with 28 CFR pt. 32 and 83 FR 22367, regardless of the outcome of the claim, including the statutory survivors of fallen public safety officers, officers catastrophically injured in the line of duty, and spouses and children seeking educational assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim forms filed by or on behalf of claimants seeking program benefits; documentation submitted in support of claims; legal, personal, financial, insurance, tax, medical, and other records received, obtained or generated to assess, adjudicate, and pay claims.

RECORD SOURCE CATEGORIES:

Federal, state, local, territorial, or tribal governments; agencies, departments, and instrumentalities of such governments; medical facilities, physicians, and other health-care providers; individual claimants and claimant representatives, including the statutory survivors of fallen public safety officers, officers catastrophically injured in the line of duty, and spouses and children seeking educational assistance; and non-profit entities engaged in rescue activity or the provision of emergency medical services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected.

A. To a court, tribunal, or other adjudicative body, or to a party before any of the same, when any of the following is a party to litigation (or has an interest in such litigation) and OJP determines that such records are arguably relevant or otherwise necessary to the litigation:

i. The DOJ, or any subunit thereof;

ii. Any employee of DOJ in his official capacity;

iii. Any employee of the DOJ in his individual capacity, where DOJ has agreed to represent the employee or

determined that it would be in the interests of the United States; or

iv. The United States (or any agency, department, or instrumentality thereof), where the OJP determines that it would be in the interests of the United States.

B. To Federal, state, local, territorial, or tribal governments, to agencies, departments, or instrumentalities of such governments, and to non-profit entities engaged in rescue activity or the provision of emergency medical services, as necessary to obtain information relevant to the adjudication of a claim for program benefits, including whether such benefits have been or are being paid improperly.

C. To appropriate government agencies, to coordinate, with such agencies, the timing or offsetting of benefits, under or in connection with programs they administer (including whether such benefits have been or are being paid improperly), as may be required or authorized by law (including whether offsetting benefits were paid under 34 U.S.C. 10281(f)).

D. To entities and persons that provide national peer support and counseling programs to families of public safety officers who have sustained a fatal or catastrophic injury in the line of duty.

E. To researchers or statisticians, with the approval of the BJA Director, for any research or statistical purposes consonant with the mission of the PSOB program.

F. To claimants, prospective claimants, or their authorized representatives, to the extent necessary to facilitate their pursuit of their claims for program benefits.

G. To an employer or school having information that is or may be relevant to a claim, in order to obtain information from the same to the extent necessary to adjudicate a claim for program benefits (including whether such benefits have been or are being paid improperly).

H. To labor unions, national public safety organizations, and other voluntary employee associations of which the claimant is, or the deceased public safety officer was, a member, for the purpose of assisting the claimant with the processing of his claim for program benefits.

I. To the Executive Office of the President, for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his behalf, but only when the individual has sought that Office's assistance in a matter relating to a claim for program benefits and that Office makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

J. To any or all of the following (on OJP's initiative), where the OJP determines that there is or may be good cause to question the legality or ethical propriety of the conduct of a person or entity representing a person in a matter before the agency: (1) Applicable civil or criminal law enforcement authorities; (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as a representative; and (3) the office in DOJ responsible for making referrals to licensing bodies or for supervisory or professional discipline.

K. Where OJP determines that a record, either alone or in conjunction with other information, does or may indicate a violation of law (criminal, civil, or regulatory in nature), to an appropriate Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

L. To any person or entity that OJP has reason to believe does or may possess information regarding a matter relevant to the administration of the PSOB Program, to the extent deemed to be necessary by OJP in order to obtain information relevant to the adjudication of a claim for program benefits, including whether such benefits have been or are being paid improperly.

M. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when DOJ determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

N. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the particular context would constitute an unwarranted invasion of personal privacy.

O. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish a Federal function related to this system of records.

P. To a former DOJ employee, for purposes of: Responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable DOJ regulations; or facilitating communications with such former DOJ employee, as may be necessary for personnel-related or other official purposes where DOJ requires information and/or consultation assistance from the former employee regarding a matter within that former employee's former area of responsibility.

Q. To a Member of Congress (or staff acting on the Member's behalf) when the same requests the information on behalf of, and at the request of, the individual who is the subject of the record.

R. To the National Archives and Records Administration (NARA) or the General Services Administration for record management inspections and such other activities conducted under the authority of 44 U.S.C. 2904 and 2906.

S. To appropriate agencies, entities, or persons, when (1) DOJ suspects or has confirmed that there has been a breach of the system of records; (2) DOJ has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, property, DOJ (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with the DOJ's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

T. To a Federal agency or department (or an instrumentality of the Federal Government), when DOJ determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, property, 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.

U. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored in paper and/or electronic format. Paper records are stored in individual file folders and file cabinets with controlled access. Electronic records are stored in electronic media via a configuration of client/servers and personal computers. Records are stored in accordance with applicable executive and agency orders,

statutes, and agency implementing regulations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Files and automated data are retrieved by name of a claimant, name or Social Security number of the individual claimed to be a deceased or catastrophically injured public safety officer, and/or claim file number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

A retention schedule for retaining PSOB records electronically is currently being developed with the National Archives and Records Administration. Under OJP's current record disposition authority, OJP Handbook 1330.2A, records within the PSOB database have been classified as permanent.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are access controlled and password protected. To further safeguard the electronic records, a FedRAMP-compliant cloud solution is utilized, which implements FISMA moderate level security controls, including use of encrypted communication channels for data transmissions and encrypting stored data to protect confidentiality of sensitive data. Paper records are secured in locked file cabinets or in locked offices. All files are maintained in a guarded building.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the Government Information Specialist, Office of Justice Programs, Department of Justice, Room 5400, 810 7th Street NW, Washington, DC 20531 or *FOIAOJP@usdoj.gov.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Although no specific form is required, forms for this purpose may be obtained from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *http://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act may be found at 28 CFR part 16 Subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' section, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act may be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

NOTIFICATION PROCEDURE:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' section, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

64 FR 25070 (May 10, 1999): Last published in full;

66 FR 8425 (January 31, 2001): Added one routine use;

72 FR 3410 (January 25, 2007): Added one routine use;

82 FR 24147 (May 25, 2017): Rescinded 72 FR 3410 and added two routine uses.

[FR Doc. 2019–21584 Filed 10–7–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Apprenticeship Expansion (SAE) Grant Research Study

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''State Apprenticeship Expansion (SAE) Grant Research Study,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 7, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201905-1205-008* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the State Apprenticeship Expansion (SAE) Grant Research Study information collection. The U.S. Department of Labor's (DOL's), Employment and Training Administration (ETA) has commissioned an implementation evaluation of its efforts to expand registered apprenticeships. Through State Apprenticeship Expansion grants and National Industry Intermediary and Equity Partner contracts, DOL is seeking to expand apprenticeship programs to new industries and occupations,

increase the number of apprentices, and encourage the inclusion of apprentices from diverse backgrounds. The National Apprenticeship Act of 1937 authorizes this information collection. *See* 29 U.S.C. 50.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on August 8, 2018 (83 FR 39130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201905–1205–008. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: State Apprenticeship Expansion (SAE) Grant Research Study.

OMB ICR Reference Number: 201905–1205–008.

Affected Public: State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 48.

Total Estimated Number of Responses: 48.

Total Estimated Annual Time Burden: 59 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 1, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–21932 Filed 10–7–19; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Openings and Labor Turnover Survey (JOLTS)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Job Openings and Labor Turnover Survey (JOLTS),'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 7, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1220-001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Job Openings and Labor Turnover Survey (JOLTS). JOLTS collects data on job vacancies, labor hires, and labor separations. The data can be used as demand-side indicators of labor shortages. These indicators of labor shortages at the national level greatly enhance policy makers' understanding of imbalances between the demand and supply of labor. Presently there is no other economic indicator of labor demand with which to assess the presence of labor shortages in the U.S. labor market. The availability of unfilled jobs is an important measure of tightness of job markets, symmetrical to unemployment measures. 29 U.S.C. Chapter 1 part 2 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0170. The current approval is scheduled to expire on September 30, 2021. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 31, 2019 (84 FR 37350).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure

appropriate consideration, comments should mention OMB Control Number 1220–0170. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Job Openings and Labor Turnover Survey (JOLTS).

OMB Control Number: 1220–0170.

Affected Public: Federal Government; State, Local, or Tribal governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses and organizations.

Total Estimated Number of Respondents: 11,681.

Total Estimated Number of Responses: 140,171.

Total Estimated Annual Time Burden: 23,362 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 2, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–21933 Filed 10–7–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0007]

Online Delivery of OSHA's Outreach Training Program 10- and 30-Hour Courses

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

ACTION: Request for information.

SUMMARY: OSHA requests information, comments, and documents that would assist the agency in determining whether to adopt a new online delivery model for OSHA's Outreach Training Program. The OSHA Outreach Training Program is a hazard awareness training program that educates participants on the recognition, abatement, and prevention of job-related hazards in the construction, general, and maritime industries, and at disaster sites. The potential new model would be limited to OSHA's 10- and 30-hour Outreach courses for the construction, general, and maritime industries. The new model would not include the disaster site worker training program. OSHA plans to use the information collected from this request to determine whether the new model would address issues associated with the existing model. If the new model were implemented, the agency would develop policies and procedures for the online Outreach Training Program courses to ensure that online providers meet OSHA's expectations for program quality and consistency.

DATES: Submit information, comments, and documents on or before December 9, 2019. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments and additional materials, identified by Docket No. OSHA–2019–0007 by any of the following methods:

Electronically: Submit comments and attachments electronically to the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions online for making electronic submissions.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 963–1648.

Regular mail, hand delivery, express mail, or messenger (courier) service: Submit comments and any additional material (for example, studies or journal articles) to the OSHA Docket Office, Docket No. OSHA–2019–0007, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Ave. NW, Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627). All additional material must clearly identify your electronic submission by name, date, and docket number so that OSHA can attach them to your comments. Due to security procedures, there may be delays in receiving materials that are sent by regular mail. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m.–3:00 p.m., ET.

Instructions: All submissions must include the agency's name and the docket number for this Request for Information (RFI) (OSHA–2019–0007). When submitting comments or recommendations on any of the issues raised in this RFI, commenters should explain their rationale and, if possible, provide data and information to support their comments or recommendations. Comments and other material, including any personal information, will be placed in the public docket without revision, and will be publicly available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting statements they do not want to be made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download submissions or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. The *https://www.regulations.gov* index lists all documents in the docket. All submissions, including copyrighted materials, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: David Serra, Outreach Training Program Coordinator, Training Programs, Office of Training Programs and Administration, Directorate of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, by email: *serra.david.m1@dol.gov.*

Copies of this ***Federal Register*** *notice:* Electronic copies are available at *https://www.regulations.gov.* This **Federal Register** notice, news releases, and other relevant information are also available on OSHA's web page at *https://www.osha.gov.*

References and exhibits: Documents referenced by OSHA in this request for information, other than OSHA standards and **Federal Register** notices, are available in Docket No. OSHA–2019–0007. Additional references are OSHA Outreach Training Program

Requirements [April 1, 2019], OSHA Outreach Training Program Construction Industry Procedures [April 1, 2019], OSHA Outreach Training Program General Industry Procedures [April 1, 2019], OSHA Outreach Training Program Maritime Industry Procedures [April 1, 2019]. The docket is available at *https://www.regulations.gov,* the Federal eRulemaking Portal. For additional information on submitting items to, or accessing items in, the docket, please refer to the **ADDRESSES** section of this RFI. Exhibits are available at *https://www.regulations.gov.* All materials in the dockets are available for inspection and copying at the OSHA Docket Office.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The OSHA Outreach Training Program is a hazard awareness training program that promotes workplace safety and health. The program educates workers and employers on how to recognize, abate, and prevent job-related hazards in the construction, general, and maritime industries, and at disaster sites. Training is conducted in both classroom and online formats. The federal government does not mandate participation in the OSHA Outreach Training Program, and the program is not intended to meet employer responsibilities for safety and health training of their employees. The program is voluntary and does not meet the training requirements contained in any OSHA standard.[1] Nevertheless, some states and local jurisdictions have enacted legislation mandating OSHA Outreach Training Program training, and some employers and unions require workers to complete this training to work in certain job sites or fulfill their own safety training goals.

OSHA has concerns related to a number of issues associated with the existing online program, including inconsistent training quality, insufficient monitoring and oversight available to the agency, and public confusion regarding the OSHA-authorized Outreach Training Program. OSHA will consider any comments received in response to this Request for Information (RFI) to determine whether a new online training model called the OSHA Online Outreach Training Program Consortium should be adopted to address these issues.

II. Background

A. Overview of OSHA's Outreach Training Program

OSHA's Outreach Training Program is taught by authorized safety and health professionals who complete an OSHA Outreach Training Program trainer course that enables them to teach 10- and 30-hour Outreach Training Program classes for workers in construction, general industry, maritime, and disaster sites. The 10-hour Outreach class is designed for entry-level workers, while the 30-hour Outreach class is more appropriate for individuals with experience in issues related to workplace safety or whose job responsibilities include ensuring workplace safety.

After participants have completed training, trainers request and receive Outreach Training Program student course completion cards through their Authorizing Training Organization (ATO). An ATO is the organization that sponsored the trainer's most recent trainer course or trainer update course, which is either OSHA's Directorate of Training and Education (DTE) or an OSHA Training Institute (OTI) Education Center.

The OTI Education Centers are a national network of nonprofit organizations authorized by OSHA to deliver occupational safety and health training to private and public sector workers and employers, other federal agencies, and occupational safety and health professionals. The primary focus of each OTI Education Center is to provide OSHA training courses throughout OSHA's ten regions in support of the OSH Act and OSHA's training mission. Additional information on the OTI Education Centers is available on OSHA's web page at *https://www.osha.gov/otiec.*

In 2001, OSHA began an Online Outreach Training Program, which provides online, rather than classroom, delivery of training courses for its 10-hour and 30-hour construction and general industry programs. Prior to 2001, all authorized OSHA trainers were required to conduct in-person training. OSHA also implemented an application process for becoming an authorized online training provider.

OSHA recognizes the benefits of having access to an online platform for training. However, the agency has a number of concerns with the existing model that it would like to address, including inconsistent training quality, insufficient program monitoring and oversight available to the agency, and public confusion regarding OSHA-authorized Outreach Training Programs. OSHA has received numerous complaints regarding online training, including:

- Individuals completing online courses on behalf of another registered student;
- Individuals accessing and completing online courses from outside the geographic jurisdiction of the agency;
- Publicly posted video clips, media, or other information instructing individuals on methods to complete an Online Outreach Training Program 10-

[1] For information on OSHA's training-related requirements, see OSHA Publication #*2254, Training Requirements in OSHA Standards* (*https://www.osha.gov/Publications/osha2254.pdf*).

or 30-hour class in less than the minimum required time;

- Late submissions of card processing requests;
- Failure of online providers to issue student course completion cards after receipt from OSHA within required time limits;
- Failure of online providers to issue course completion cards;
- Significant customer service issues, including poor technical support, inadequate responses from customer service staff, and difficulty reaching the authorized Outreach trainer;
- Issuance of course completion cards and course completion certificates for classes not affiliated with the Outreach Training Program, but appearing to be offered by OSHA;
- Misleading advertising including the use of department and agency logos, and prohibited terms (*e.g.,* certification, accredited); and
- Difficulty distinguishing by the general public between OSHA-authorized online Outreach providers and resellers, pass-through entities, and other online safety and health offerings.

Because of these issues, on October 31, 2009, OSHA instituted a moratorium on receiving or approving any additional applications for online training providers. As a result, only nine previously authorized online providers currently provide training.[2]

B. Online Outreach Training Program Consortium Model

OSHA's Directorate of Training and Education (DTE) is considering an alternative online model that provides safeguards against some of the issues facing the existing model. This approach is referred to as the Online Outreach Training Program Consortium Model (Model). Under this Model, a consortium would be a voluntary agreement between interested organizations, as opposed to a contract or non-financial cooperative agreement.

Under this approach, OSHA would not limit the number of consortiums that could provide online training. Instead, a consortium would be authorized to provide online training if it met OSHA's requirements to become an authorized consortium.

Authorized consortiums would consist of either three or four collaborators, who would enter into a consortium agreement. Each collaborator would have designated responsibilities detailed in the agreement. The consortium agreement would outline technical, curriculum, and program responsibilities.

Consortiums with three collaborators would include OSHA, an OTI Education Center, and an online provider. Consortiums with four collaborators would include OSHA, an OTI Education Center, an online provider, and a stakeholder.

Under the model, the OTI Education Center would have oversight and student course completion card processing responsibilities for the consortium. The online provider would typically be the course content developer, provider of the training, and advisor on the technical aspects of offering online training. The stakeholder would be an organization (*e.g.,* a labor union or employer) that is interested in developing and offering online Outreach training to only its members or employees. The stakeholder would most likely enter into the agreement as a fourth member, rather than an online provider, because the stakeholder would likely not have the information technology experience and resources to act as an online provider. Section III contains a description of each consortium member's responsibilities.

Whether the consortium is comprised of three or four collaborators, OSHA would require that all actions taken by an authorized consortium be consistent with OSHA requirements. OSHA also would have final programmatic authority over the consortium and its members. OSHA would review the consortium agreement and ensure the agreement is in compliance with Outreach Training Program requirements. These requirements would include, for example, the existing *OSHA Outreach Training Program Requirements* and *Outreach Training Program Industry Procedures,* as well as a new *OSHA Directive for Online Outreach Training Program Consortiums* that OSHA would develop if it adopted the consortium model. In addition, OSHA would have final authority over termination and expiration of consortium agreements.

[2] In 2011, OSHA developed a plan to replace the existing online providers through a new competitive model (see 76 FR 17451 (Mar. 29, 2011)). Under the competitive model, OSHA would select a limited number of providers through non-financial cooperative agreements. While OSHA awarded cooperative agreements on January 12, 2012, the agreements never went into effect because of litigation in the United States Court of Federal Claims. In its most recent decision, the court permanently enjoined OSHA from making awards under the competitive model unless it corrected certain defects in its solicitation under the Competition in Contracting Act. OSHA has taken no further action to make awards under the competitive model, and if OSHA adopts a different model, it will no longer attempt to use the competitive model to make awards.

III. Request for Information, Data, and Comments

OSHA would like data, information, and comments on the below questions. Commenters are asked to clearly delineate which question number related to their comment(s) or other submission(s) is intended to address.

A. OSHA's Current Model for In-Classroom and Online Delivery of OSHA Outreach Training

A.1. What are the benefits to the current model?

A.2. Are there any issues associated with the current model other than those discussed by OSHA in this Request for Information? If so, please list these additional issues. Provide details and examples where possible.

B. Modifying the Current Online Outreach Training Program Model

B.1. Are there any approaches that OSHA should consider adopting other than the consortium approach (for example, the competitive approach described in footnote 2 of this RFI)?

- If you believe OSHA should adopt another approach, please describe the alternative approach and explain why you believe it should be adopted.
- If you believe OSHA should leave the existing application process in place or, alternatively, that OSHA should adopt the consortium approach, please explain why.

B.2. What are the benefits of the consortium approach?

B.3. What are the weaknesses of the consortium approach?

B.4. Does online delivery of the Outreach Training Program effectively meet OSHA's mission to educate the public on workplace hazards? If so, please explain why. If not, explain why not, and also outline methods of educating the public on workplace hazards you believe would effectively meet OSHA's mission.

C. Scope of Online Offerings

OSHA is considering requiring consortiums to offer the 10-hour and 30-hour OSHA Outreach Training Program courses for each of the following three industries: Construction, general, and maritime industries (*i.e.,* a total of three separate 10-hour courses and three separate 30-hour courses).

C.1. Do you believe a requirement that consortiums offer the 10-hour and 30-hour OSHA Outreach Training Program courses for each of these three industries (construction, general, and maritime) would pose a challenge to online providers? If so, please explain the nature of those challenges.

C.1.a. If you believe there are challenges, how can these challenges be resolved?

C.1.b. Can OSHA resolve these challenges? How? Please explain.

C.1.c. Can online providers resolve these challenges? How? Please explain.

OSHA is considering requiring consortiums to offer the 10- and 30-hour OSHA Outreach Training Program courses in languages other than English.

C.2. Do you believe the OSHA Outreach Training Program classes should be offered in languages other than English?

C.2.a. If so, what challenges do you foresee with developing OSHA Outreach Training Program classes in languages other than English?

C.2.b. Can the consortium collaborators resolve these challenges? How? Please explain.

D. Delineating Consortium Collaborator Distinctions Under the Consortium Model

To prevent conflicts of interest, the appearance of conflicts of interest, or self-dealing, OSHA is considering prohibiting consortium collaborators from serving in a 'dual-role' within the same agreement. That is, OSHA would require that each partner in a consortium agreement be a separate, distinct entity, filling a specific collaborator role within that agreement, and an OTI Education Center could not serve as both the OTI Education Center collaborator and the online provider collaborator within the same consortium. Thus, if OTI Education Center A wishes to be an online provider collaborator, OTI Education Center A would have to enter into a consortium agreement with a different OTI Education Center (*e.g.,* OTI Education Center B), which would serve as the sole OTI Education Center collaborator for that consortium. OTI Education Center A could also serve as the OTI Education Center collaborator in a separate consortium or consortiums.

D.1. Do you agree that consortium collaborators should be restricted to filling only one partner role within the same consortium agreement? Why or why not?

D.2. How broadly should OSHA define the term ''separate, distinct entity?'' Should a subsidiary component of a parent organization (for example, a subsidiary business, franchise, or division, or a distinct department within a college or university) be considered a ''separate, distinct entity'' from other subsidiary components of the same parent organization? Why or why not?

D.3. Are there any additional restrictions OSHA should consider or incorporate to prevent conflicts of interest, the appearance of conflicts of interest, or self-dealing?

E. Responsibilities of the OTI Education Center Under the Consortium Model

Under the Consortium Model, the OTI Education Center (a required consortium collaborator) would have oversight and processing responsibilities. Thus, the OTI Education Center would:

- Oversee course curriculum and content. This might include curriculum development, and/or curriculum evaluation, and audits of online training delivery. The OTI Education Center could also act as a content advisor.
- Conduct monitoring (through, for example, record audits and training observations) of the authorized Outreach trainer(s) that work(s) for the online provider.
- Process Outreach Training Program Reports (OTPRs) and requests for 10- and 30-hour Outreach student course completion cards.
- Oversee online providers to ensure compliance with OSHA requirements. These requirements include, for example, the existing *OSHA Outreach Training Program Requirements* and *Outreach Training Program Industry Procedures,* as well as a new *OSHA Directive for Online Outreach Training Program Consortiums* that OSHA would develop if it adopted the consortium model.

E.1 Do you agree that the OTI Education Center should have the responsibilities listed above under the consortium model?

- If so, do you believe OSHA has adequately stated all responsibilities the OTI Education Center should have? Please explain.
- Explain any other, or different, responsibilities you think the OTI Education Center should have.

F. Responsibilities of the Online Provider Under the Consortium Model

Under the Model, the online provider (a required consortium collaborator) would typically be the course content developer, provider, and advisor on the technical aspects of online training. Thus, the online provider would be responsible for:

- Technical aspects, including system capabilities and requirements, system controls, data security and privacy, user authentication, and IT customer support.
- Curriculum and training content, including development and delivery method, along with ensuring training content is current, relevant, and complies with OSHA Outreach Training Program requirements and procedures and industry-specific procedures.
- Program management, including administering registration, maintaining records (*e.g.,* student training record retention), reporting training to and requesting Outreach student course completion cards from the OTI Education Center, ensuring compliance with geographic jurisdiction and authorized Outreach trainer status requirements; collecting tuition and fees, and providing customer service. Program management would also include hosting registration and other student records on a Shareable Content Object Reference Model (SCORM) or Aviation Industry CBT Committee (AICC) compliant Learning Management System (LMS).[3]
- Establishment and maintenance of a permanent website landing page dedicated solely to the online provider's authorized online Outreach course/class offerings. This requirement would not limit or restrict the provider's ability to use media other than the landing site (*e.g.,* other websites) to market or advertise either OSHA-authorized Outreach courses or other occupational safety and health training available through the provider. Rather, the landing page would serve as a one-stop portal or point of entry for the public to access OSHA-authorized online Outreach training. OSHA might also require that the landing page contains copies of the OSHA approval documents authorizing the course, or other verification mechanisms (hyperlinks to *https://www.osha.gov*), to assure the public of the authenticity of the course.

F.1. Do you agree that the online provider under the Model should have the responsibilities listed above?

- If so, do you believe OSHA has adequately stated all responsibilities the online provider should have? Please explain.
- Explain any other, or different, responsibilities the online provider should have.
- What common elements should be required on an authorized online provider-landing page?
- What additional verification mechanisms that demonstrate the training is recognized as an OSHA

[3] Electronic learning (e-learning) software applications use industry-recognized technical standards to ensure interoperability between online learning content and learning management systems (LMS). Both SCORM and AICC are technical specifications widely accepted within the e-learning community. OSHA training content is SCORM-compliant.

Outreach Training Program should OSHA consider requiring online providers to make available to interested students?

G. Responsibilities of OSHA Under the Consortium Model

Under the Model, OSHA (a required consortium collaborator) would have final authority over the consortium and its partners in accordance with OSHA requirements. Requirements include, for example, the existing *OSHA Outreach Training Program Requirements* and *Outreach Training Program Industry Procedures,* as well as a new *OSHA Directive for Online Outreach Training Program Consortiums* that OSHA would develop if it adopted the consortium model. Thus, OSHA would:

- Be responsible for approving and authorizing consortiums providing online training.
- Conduct monitoring and investigations of all consortium members to ensure compliance with OSHA Outreach Training Program requirements and procedures.
- Have authority to take corrective action and adverse action (up to and including dissolution of the consortium) for violations of OSHA requirements.
- Design, develop, and host the sole, official dedicated page on the OSHA website, that is clearly identifiable and easily accessible to the public, to direct and link the public to a comprehensive list of all OSHA-authorized online Outreach training providers.

G.1. Do you agree that OSHA should have the responsibilities listed above under the consortium model?

- If so, do you believe OSHA has adequately stated all the responsibilities OSHA should have? Please explain.
- Explain any other, or different, responsibilities you think OSHA should have.

H. Responsibilities of the Optional Stakeholder Under the Consortium Model

Under the Model, the Stakeholder (an optional consortium collaborator) would be an organization (*e.g.,* a labor union or employer) that is interested in developing and offering online Outreach training to only its members or employees. Thus, a stakeholder, if there is one, would:

- Develop and/or review curriculum content specific to its industry/organization. The stakeholder might develop the industry-specific or targeted audience curriculum, collaborate with, or act as an advisor to, the online provider who would develop the content.
- Ensure only the stakeholder's members or employees have access to the training.
- Oversee all elements of student training.

H.1. Do you agree that the optional stakeholder should have the responsibilities listed above under the consortium model?

- If so, do you believe OSHA has adequately stated all the responsibilities the optional stakeholder should have? Please explain.
- Explain any other, or different, responsibilities you think the optional stakeholder should have.

I. Termination of Consortium Agreements

Under the consortium model, OSHA might permit any member of a consortium to request OSHA to terminate the agreement. For example, a consortium member might request OSHA to terminate the agreement because of non-compliance by one or more members. After an investigation, OSHA would determine whether to terminate the consortium agreement. OSHA would terminate the agreement in accordance with the procedures it adopts for dissolution of consortiums.

I.1. Do you agree with OSHA's intent to allow any member to request OSHA to terminate a consortium agreement?

- If so, please explain.
- If no, please explain why a termination provision is not recommended.

I.2. Under what conditions should OSHA terminate a consortium agreement? Should OSHA terminate an agreement whenever any consortium member requests termination regardless of the reason? Should some requests for termination be rejected depending on which member requests termination or the reason given for the request? Should some reasons be cause for termination if proffered by certain members but not by others? Please explain.

I.3. What concerns/issues may arise with terminating a consortium agreement prior to its expiration date? Please explain.

J. Expiration Dates of Consortiums

OSHA is considering requiring each consortium agreement to have an initial expiration date of one or two years from the date of the agreement. OSHA might permit consortium members to renew the agreement in up to five (5) year increments.

J.1. Should there be an initial expiration date for consortium agreements? Please explain.

J.2. If you believe there should be an initial expiration date for consortium agreements, what should the initial expiration date be? Please explain.

J.3. Should OSHA allow agreements to be renewed? Please explain.

J.4. If you believe OSHA should allow agreements to be renewed, what should be the renewal period? Please explain.

K. Whether OSHA Should Adopt Minimum Technical Specifications for Online Delivery of Training Content

OSHA is considering minimum technical requirements for online delivery of OSHA Outreach classes to ensure accessibility and consistently reliable delivery of training to end users. These minimum technical requirements might follow training and industry best practices for online delivery, while permitting providers the flexibility to leverage emerging technologies. OSHA would have final approval of consortium partners' recommendations for technology changes. OSHA is considering minimum technical requirements in several areas, including online provider system requirements and capabilities, system controls, and user authentication.

Online Provider System Requirements and Capabilities

OSHA is considering requiring online providers to:

- Ensure bandwidth is sufficient for a large volume of users.
- Ensure selected web-authoring tools have the capability to program and publish responsive courseware to accommodate a variety of electronic devices and operating system software.

K.1. Are the above system requirements and capabilities reasonable and sufficient? Please explain.

K.2. What additional online provider system requirements and capabilities are needed or should be considered? Please explain.

System Controls

OSHA is considering requiring online providers to incorporate specific system controls in their course offerings, including but not limited to, the following:

- Ensuring OSHA-required instructional contact times (seat times) are met (*e.g.,* ensuring both minimum contact time(s) for topics and overall course instructional time(s) are met; requiring a system time-out after the student is inactive for a specific period of time; and establishing a maximum of 7.5 hours of online training per 24-hour period).
- Using lockout mechanisms to ensure compliance with OSHA requirements (*e.g.,* ensuring training

does not exceed 6 months and students cannot access training from geographic exclusion areas).

- Ensuring users do not save, download, or conduct screen captures of training content and testing screens.
- Incorporating system controls that detect and prevent program intrusions, hacks, or workarounds. OSHA believes these system controls are especially important because workarounds, such as video clips that show how to circumvent training sessions, have been posted on public social media and other websites.
- Prioritizing and ensuring user data security and privacy, and having a written policy that explicitly prohibits selling or transferring student information or data.
- Ensuring bookmarking functions and course mapping access are operational.

K.3. What system controls exist to ensure the above requirements? Please provide as much detail as possible. Also, please indicate whether the system controls listed in your response are industry-recognized.

K.4. Are there any weaknesses or vulnerabilities in the system controls you discussed in question K.3.?

User Authentication

OSHA is considering requiring online providers to incorporate Multi-Factor Authentication (MFA) mechanisms for access to online Outreach courses, and requiring end users to complete periodic MFA checks throughout training delivery sessions. OSHA might also require that MFA mechanisms meet industry best practices; that MFA ensures end users' digital identity verification measures adhere to stringent standards; and that MFA ensures training is completed by the student, and not a surrogate.

K.5. What level of MFA is appropriate for online Outreach classes (*e.g.,* banking, healthcare, retail business purchases, other)? Please explain.

K.6. What organization(s) should determine industry best practices or certify MFA integrity? For example, should MFA criteria set by the National Institute of Standards and Technology (NIST) be employed to determine industry best practices? Should MFA integrity be certified by NIST? Are there any other organizations that should determine industry best practices or certify MFA integrity? Please explain.

L. Whether OSHA Should Adopt Requirements for Validating Online Curriculum and Training Content

OSHA is considering requirements to ensure online training under the Model is consistent with OSHA Outreach Training Program requirements, procedures, and policies, and that authorized training programs are revised in a timely manner when program or agency requirements or policies change. These provisions would include, but not be limited to, the following:

Maintaining Curriculum Content

OSHA is considering requiring online providers and stakeholders to be accountable for ensuring online training content is current, relevant, and compliant with current Outreach Training Program requirements and industry-specific procedures.

Timelines and Processes To Ensure Content/Curriculum Is Updated as OSHA Implements Policy Changes

OSHA currently requires authorized Outreach trainers to adhere to routine policy changes within 90 days of a requirement and procedure release date. Cases of emergent or priority policy changes may require more immediate implementation. For example, OSHA revised the mandatory *Introduction to OSHA* training module to reflect new reporting requirements in OSHA's recordkeeping standard, 29 CFR part 1904 (including, for example, a new requirement to report instances of workplace amputations within 24 hours of finding out about them), and subsequently directed Outreach trainers to begin delivering that revised content in an accelerated timeframe. OSHA regularly provides course updates, revisions, and program policy and procedures that include timeframes and implementation dates for instructor-led training. OSHA is considering similar requirements for online providers and stakeholders.

L.1. Is 90 days a reasonable time for an online provider and stakeholder to update/revise curriculum content to stay in compliance with routine policy changes? Please explain.

L.2. What accountability mechanisms or approach should OSHA consider to ensure training content is current, relevant, and compliant with agency timeframes? Please explain.

L.3. What timeframes are reasonable for implementation of immediate, priority, or emergent program or policy changes? Should OSHA's timeframes for immediate, priority, or emergent program or policy changes be set on a case-by-case basis (depending on the particular priority or emergency)? Please explain.

Student Assessment Strategies

OSHA is considering requiring online providers and stakeholders to be accountable for ensuring online learning courses assess student achievement of the learning objectives. If OSHA adopts such requirements, OSHA is considering requiring that practice and test questions/items be programmed as follows:

- Practice questions would be required; therefore, they would need to be programmed so students cannot advance through the course without providing the correct answer. Additionally, these items would need to be programmed to provide immediate feedback to students for both correct and incorrect responses. Students would need to be able to determine how they are doing in the course. Note that because this would be part of the learning, the correct answer would need to be provided in the feedback prompt to get students back on the right path as soon as possible.
- Knowledge test questions at the end of each lesson/module would be required. Students would need to achieve a score of 100% to successfully complete the online course. Remediation for each question would need to be programmed so students could review the topic and attempt the knowledge test question again, until answered correctly.

L.4. Are the strategies listed above sufficient and reasonable to ensure achievement of online learning objectives? Please explain.

- For example, is requiring practice questions/items to be answered correctly sufficient to help students determine how they are doing in the course? Please explain.
- As another example, is requiring a 100% test score a sufficient way to confidently measure students' achievement of the online learning objectives? Please explain.

L.5. Are there any student assessment strategies, other than those listed above, which can be applied to ensure the achievement of online learning objectives? If so, please explain.

Ensuring Appropriate Levels of Interactivity

OSHA is considering requiring online providers and stakeholders to be accountable for ensuring an appropriate level of interactivity is incorporated into online training. OSHA could structure this requirement around the four levels of interactivity OSHA uses for web-based training. The below table describes these levels of interactivity:

LEVELS OF INTERACTIVITY

Level	Description
Level I—Passive	Student acts solely as a receiver of information. Student must read the text on the screen or view graphics such as illustrations, charts, and graphics and use the navigational buttons to progress forward through the program or move back. An example of this type of online product may also contain pop-ups and hyperlinks to web sites, materials, and other information interspersed between text and graphic presentations.
Level II—Limited Interaction	Student makes simple responses to instructional cues. The online product includes learning activities listed in Level I as well as multiple choices, drop-down lists, and labeling. An example would be an online product that includes these types of test items at the end of a unit of instruction to test student's grasp of the information.
Level III—Complex Participation.	Student makes a variety of responses using varied techniques in response to instructional cues. Responses would include those listed for a Level II—Limited Interaction as well as text entry boxes and manipulation of graphic boxes to test assessment of the information presented. An example is data entry online training where the process is displayed and then the user is challenged to complete the process by entering information into empty process fields instead of just selecting from a multiple choice answer list.
Level IV—Real Time Participation.	Student is directly involved in a life-like set of complex cues and responses. This involves engaging the student in a simulation that mirrors the work situation with stimuli-and-response coordinated to the actual environment. Examples of this type of online product include virtual reality, or use of artificial intelligence similar to computer games and flight simulators.

If OSHA adopts this structure for online training, OSHA would require online providers to incorporate a certain percentage of higher-level interactive training (*e.g.,* Level IV as opposed to Level I) into online training programs.

L.6. Is the above structure feasible for ensuring there is appropriate interactivity in online courses? Please explain.

L.7. If you believe the above structure is feasible for ensuring there is appropriate interactivity in online courses, what percentages should be allotted for each level of interactivity? What percentage of the course should be held at Level I? Level II? Level III? Level IV? Please explain.

L.8. Are there levels of interactivity, other than those listed above, for ensuring online providers incorporate appropriate interactivity in online courses? Please explain.

Ensuring Student Engagement While Meeting Required Training Timeframes

L.9. Should OSHA consider requiring online providers and stakeholders to include additional interactive activities to actively engage students who quickly grasp the information to ensure they meet minimum required seat times for the 10- and 30-hour courses?

L. 10. Should there be technical requirements that measure total topic activity in a way other than screen time?

Ensuring Adult Learning Principles Direct the Design and Development of Content

An adult learning principle is that adults learn by doing. Therefore, OSHA is considering requiring online content to be developed using the one-third to two-thirds (⅓:⅔) instructional strategy approach. This approach allows for (⅓) of the course to be presentation of the learning and (⅔) of the course devoted to practice of the learning, with feedback to the learner indicating their progress. Online content developers/providers would achieve this requirement using the Levels of Interactivity described above as a guide: Level I for the presentation portion; and Levels II–IV for the practice portion.

L.11. Should OSHA require online content to be designed using specific adult learning principles, such as the principle that adults learn by doing? Please explain.

L.12. Is requiring the ⅓:⅔ instructional strategy to support an active training method feasible? Please explain.

M. Ensuring Program Management and Strengthening Program Oversight

OSHA is considering a level of agency oversight of online Outreach course delivery comparable to existing agency oversight of instructor-led, classroom outreach course delivery. Specifically, OSHA is considering implementing program rules that are specific to online Outreach training in several areas, including, but not limited to setting course tuition and card processing fees, prohibiting resellers, prohibiting pass through agreements, prohibiting multi-branded offerings, and establishing program administrative requirements.

Setting of Course Tuition and Card Processing Fees

OSHA is not considering setting prices for online Outreach courses. Thus, for example, an online provider would be able to set the overall price for its online 10-hour general industry Outreach course offered by its consortium. OSHA believes however, the fee charged by OTI Education Centers for Outreach card processing must be the same for all OSHA Outreach Training Program courses, whether those courses are led by an instructor in a classroom or taken online. The fee for Outreach card processing is currently $8.00 per card (subject to change).

OSHA is considering enforcing assessment of identical card processing fees—whether the cards are received through completion of Instructor-Led Training (ILT) or online delivery—regardless of online vendor, ILT class provider, or which OTI Education Center processes the card request.

M.1. Should card-processing fees be listed or identified during online registration?

M.2. How can consortium collaborators demonstrate to OSHA that the card-processing fee per student complies with program requirements?

Potential Prohibition on Resellers, Pass Through Agreements, Multi-Branded Offerings

OSHA is concerned that certain practices could result in confusion among customers as to the origin and content of online courses. OSHA is considering adopting requirements that would reduce this confusion, including, for example, prohibiting the use of reselling, pass through agreements, and multi-branded offerings. Reselling and pass through agreements allow a student to purchase and access an online course through a secondary party or secondary-tiered provider (*i.e.,* the reseller, which in this context, might include any entity (*e.g.,* an affiliate or business partner)

other than the online provider or stakeholder itself, or any websites operated by such entities). Multi-branded offerings include OSHA Outreach-like training that is similar, but not equivalent, to OSHA Outreach Training Program training. Multi-branded offerings do not result in the student receiving a legitimate 10- or 30-hour Outreach course completion card.

M.3. Do you agree the practices discussed above generate confusion for members of the public who wish to complete online OSHA Outreach Training Program classes? Should OSHA prohibit these practices? Please explain.

M.4. Should OSHA consider incorporating requirements and other controls to limit public misinformation or confusion? Please explain.

M.5. What actions should OSHA take against consortium partner practices that mislead the public? Please explain.

Program Administrative Requirements

OSHA is considering requiring online providers to establish and implement policies and procedures for administration of the Online Outreach Training Program. For example, OSHA might require online providers to establish and implement policies and procedures for: Hosting online courses in a capable Learning Management System; retaining student training records; compiling, collating, and submitting training reports and other information or data; requesting Outreach student course completion cards; administering the online training registration process; ensuring compliance with geographic jurisdiction requirements; and monitoring user experience.[4]

OSHA is also considering requiring customer service to be the responsibility of the online provider through its authorized Outreach trainer(s). To ensure satisfactory customer service, OSHA is considering requiring responses to inquiries about the following types of issues within 24 hours: Technical support; course curriculum; and Outreach student course completion cards.

M.6. Do you agree OSHA should institute the program administrative requirements listed above? Please explain.

M.7. What are industry best practices for a capable Learning Management System? Please explain.

M.8. What policies and procedures for a capable Learning Management System should OSHA require? Please explain.

M.9. What policies and procedures for student record retention should OSHA require? Please explain.

M.10. What types of training reports (*e.g.,* reports on the number of students trained, number of classes offered, average course completion rates, etc.) will best serve the interests of the consortium? Please explain.

M.11. What policies and procedures for requesting Outreach student course completion cards should OSHA require? Please explain.

M.12. What policies and procedures for online training registration process should OSHA require? Please explain.

M.13. What policies for ensuring training complies with geographic jurisdiction requirements should OSHA require? Please explain.

M.14. What policies and procedures for ensuring timely and high quality customer service should OSHA require? Please explain.

N. Additional Information

OSHA has listed within this RFI the majority of issues the agency has encountered with the current model of delivering online OSHA Outreach Training Program courses, described an alternative to the current model OSHA is considering, and also described additional requirements OSHA is considering placing on the provision of online Outreach Training Program training. The information OSHA discussed in this Request for Information is not intended to be all-inclusive and may not address all public or stakeholder concerns.

N.1. Is there any additional information, or are there any public or stakeholder concerns, not contained in this RFI, that OSHA should consider? If so, please explain.

IV. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 653 and 670(c)(1), and Secretary's Order 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed in Washington, DC.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–21943 Filed 10–7–19; 8:45 am]

BILLING CODE 4510–26–P

[4] OSHA Outreach Training Program classes may generally only be conducted in training locations within the geographic jurisdiction of the Occupational Safety and Health (OSH) Act. The geographic jurisdiction of the OSH Act is limited to the 50 U.S. States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, and Johnston Island.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–062)]

National Space Council Users' Advisory Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space Council Users' Advisory Group (UAG). This will be the fourth meeting of the UAG.

DATES: Monday, October 21, 2019, from 1:00 p.m.–5:00 p.m., Eastern Time.

ADDRESSES: Courtyard by Marriott, Washington Downtown/Convention Center, Shaw Ballroom, 901 L Street NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. James Joseph Miller, UAG Designated Federal Officer/Executive Secretary, NASA Headquarters, Washington, DC 20546, (202) 358–4417 or *jj.miller@nasa.gov*.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and via WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the Toll Free Number 1–844–467–6272 and then the numeric passcode 764096, followed by the # sign. NOTE: If dialing in, please ''mute'' your phone. To join via WebEx, the link is *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m4d0c72b19cbb68933c7a7f9da564902c.* The meeting number is 909 223 161 and the meeting password is jUj3pBS* (case sensitive).

The agenda for the meeting will include the following:

—Opening Remarks and Meeting Objectives by UAG Chair
—Expert Presentation on Global Navigation Satellite System (GNSS) Advancements for Space Operations and Science, per Subcommittee Focus Areas
—Reports and Updates from UAG Subcommittees:
  ○ Exploration and Discovery
  ○ Economic Development/Industrial Base
  ○ Outreach and Education
  ○ National Security Space
  ○ Space Policy and International

Engagement
○ Technology and Innovation
—Preliminary Deliberations on any Findings and Recommendations
—Other UAG Business and Work Plan Schedule

Attendees will be requested to sign a register prior to entrance to the proceedings. Advance RSVPs are not a pre-requisite, but may expedite entry and should be sent to Mr. James Joseph Miller via email at *jj.miller@nasa.gov.* It is imperative that the meeting be held on this date to meet the scheduling availability of key participants, and is aligned with the opening day of the 70th annual International Astronautical Congress (IAC). For further information, visit the UAG website at: *https://www.nasa.gov/content/national-space-council-users-advisory-group.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–21841 Filed 10–7–19; 8:45 am]

BILLING CODE 7510–13–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Submission for Review: Survey on Practices and Policies Related to the Treatment of Opioid Use Disorders

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of National Drug Control Policy (ONDCP) announces it will submit to the Office of Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA) an information collection request.

DATES: ONDCP encourages and will accept public comments on or before 60 days after the date of this publication.

ADDRESSES: Address all comments in writing within 60 days to Jayme Delano, Deputy Director, National HIDTA Program Office. Email is the most reliable means of communication. Ms. Delano's email address is *Jayme_A_Delano@ondcp.eop.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact the Executive Office of the President, Office of National Drug Control Policy, attention: *Jayme_A_Delano@ondcp.eop.gov.* Formal requests for additional plans and instruments must be in writing. Copies of documents submitted to OMB and other information is available from Ms. Delano who may be contacted at 202–395–6794.

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy desires to learn how adult drug courts are responding to the opioid epidemic. To do so, they propose to conduct a survey of State/Territory Drug Court Coordinators to learn more about adult drug courts' efforts to serve persons suffering from opioid use disorders, focusing particularly on the use of medication-assisted treatment (MAT). An earlier survey from 2012 found that nearly half of drug courts were not using MAT or had blanket prohibitions against methadone or buprenorphine. At the same time, ONDCP funded a suite of resources to increase uptake of MAT in treatment courts, including online and in-person training workshops, practitioner fact sheets, pocket guides for staff members and participants, professional tool kits, and sample policies and procedures materials. The proposed survey will examine statewide MAT efforts, and policies and procedures concerning MAT, including whether there have been recent changes in state certification requirements, training modules, or funding mandates to increase MAT adoption.

Overview of Information Collection

Title of Information Collection: Survey on Practices and Policies Related to the Treatment of Opioid Use Disorders.

Method of data collection: Electronic survey.

Frequency: One-time data collection.

Members of affected public: State and Territory Drug Court Coordinators.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 54.

Frequency of response: 1.

Average time per response: 17 minutes.

Annual Hour Burden: 15 hours.

Status of the proposed information collection: New.

Dated: October 3, 2019.

Michael Passante,

Acting General Counsel.

[FR Doc. 2019–21921 Filed 10–7–19; 8:45 am]

BILLING CODE 3280–F5–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Submission for Review: Survey on the Treatment of Opioid Use Disorders

AGENCY: Office of National Drug Control Policy, Executive Office of The President.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of National Drug Control Policy (ONDCP) announces it will submit to the Office of Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA) an information collection request.

DATES: ONDCP encourages and will accept public comments on or before 60 days after the date of this publication.

ADDRESSES: Address all comments in writing within 60 days to Jayme Delano, Deputy Director, National HIDTA Program Office. Email is the most reliable means of communication. Ms. Delano's email address is *Jayme_A_Delano@ondcp.eop.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact the Executive Office of the President, Office of National Drug Control Policy, attention: *Jayme_A_Delano@ondcp.eop.gov.* Formal requests for additional plans and instruments must be in writing. Copies of documents submitted to OMB and other information is available from Ms. Delano who may be contacted at 202–395–6794.

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy desires to learn how adult drug courts are responding to the opioid epidemic. To do so, we propose to conduct a survey of 269 drug courts in the counties with the highest total opioid-related overdoses and the highest opioid-related overdose rates. The aim of the survey is to learn more about adult drug courts' efforts to serve persons suffering from opioid use disorders, focusing particularly on the use of medication-assisted treatment (MAT). An earlier survey from 2012 found that nearly half of drug courts were not using MAT or had blanket prohibitions against methadone or buprenorphine. At the same time, ONDCP funded a suite of resources to increase uptake of MAT in treatment courts, including online and in-person training workshops, practitioner fact sheets, pocket guides

for staff members and participants, professional tool kits, and sample policies and procedures materials. The proposed survey will examine what impact these and other efforts have had in making MAT more widely available to patients in need of these lifesaving treatments and enhancing practitioner knowledge and acceptance.

Request for comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Overview of Information Collection

Title of Information Collection: Survey on the Treatment of Opioid Use Disorders.

Method of data collection: Electronic survey.

Frequency: One-time data collection.

Members of affected public: Administrators in drug courts in the counties with the highest total opioid-related overdoses and the highest opioid-related overdose rates.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 269.

Frequency of response: 1.

Average time per response: 15 minutes.

Annual Hour Burden: 67 hours.

Status of the proposed information collection: New.

Dated: October 3, 2019.

Michael Passante,

Acting General Counsel.

[FR Doc. 2019–21919 Filed 10–7–19; 8:45 am]

BILLING CODE 3180–F5–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Privacy Act of 1974; System of Records

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation on the Arts and the Humanities.

ACTION: Notice of modified systems of records.

SUMMARY: The Institute of Museum and Library Services (IMLS), is publishing an amendment of its systems of records to provide updated information. The Notice includes descriptions of the agency's systems of records and the ways they are maintained, as required by the Privacy Act of 1974.

DATES: The amended system is effective upon date of publication.

ADDRESSES: Nancy E. Weiss, Senior Agency Official for Privacy, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024. Email: *nweiss@imls.gov.* Telephone: (202) 653–4657.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, (202) 653–4657, *nweiss@imls.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), IMLS today is publishing an amended notice of the existence and character of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems.

Statement of General Routine Uses

The following general routine uses are incorporated by reference into each system of records set forth herein, unless specifically limited in the system description.

1. A record may be disclosed as a routine use to a Member of Congress or his or her staff, when the Member of Congress or his or her staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the subject individual for employment purposes (including the hiring or retention of any employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefits by the requesting agency) to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. In the event that a record in a system of records maintained by IMLS indicates, either by itself or in combination with other information in IMLS's possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule, or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) Such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

4. The names, Social Security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, as follows:

(a) For use in the Federal Parent Locator System (FPLS) and the Federal Tax Offset System for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

(b) For release to the Social Security Administration for the purpose of verifying Social Security numbers in connection with the operation of FPLS; and

(c) For release to the U.S. Department of the Treasury (Treasury) for the purpose of payroll, savings bonds, and other deductions; administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986); and verifying a claim with respect to employment on a tax return, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

5. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate, or

administrative tribunal of appropriate jurisdiction, and such disclosure may include disclosures to opposing counsel in the course of settlement negotiations.

6. Information from any system of records may be used as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information also may be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

7. A record may be disclosed as a routine use to a contractor, expert, or consultant of IMLS (or an office within IMLS) when the purpose of the release is to perform a survey, audit, or other review of IMLS's procedures and operations.

8. A record from any system of records may be disclosed as a routine use to the National Archives and Records Administration as part of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the government's best interest.

10. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the recipient has incurred indebtedness to the government through its receipt of government funds, and the release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

11. Information in a system of records may be disclosed as a routine use to the Treasury; other Federal agencies; ''consumer reporting agencies'' (as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)); or private collection contractors for the purpose of collecting a debt owed to the Federal Government as provided in the regulations promulgated by IMLS at 45 CFR 1183.

12. A record may be disclosed to appropriate agencies, entities, and persons when (1) IMLS suspects or has confirmed that there has been a breach of the system of records, (2) IMLS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, IMLS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IMLS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. A record may be disclosed to another Federal agency or Federal entity, when IMLS determines that information from the system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Table of Contents

This document gives notice that the following IMLS systems of records are in effect:

IMLS–1

SYSTEM NAME:

Electronic Grant Management System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024. Authorized personnel may access IMLS's electronic grant management system (eGMS) via an online portal.

SYSTEM MANAGER(S):

Deputy Directors of the Office of Museum Services and Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2018 (20 U.S.C. 9101 *et seq.*)

PURPOSE(S) OF THE SYSTEM:

To provide a central repository for information about expert reviewers, grant applicants, award recipients, and awards.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied to or have served as peer review panelists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals, home and work addresses, telephone numbers, email addresses, Social Security Numbers (only from those panelists receiving payment from IMLS), identification numbers assigned by IMLS, review group assignments, and other data concerning potential and actual reviewers, including area of expertise, institutional affiliations, peer reviewer notes and application grading, payment and/or travel reimbursement information, grant application materials, and written communication with IMLS.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the selection of reviewers and payment of honoraria to panelists, and general administration of the grant review process (evaluation of applications for federal assistance, management of active grants, communication with grantees, and processing of disbursement of grant funds). See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in an electronic database and digital file repository.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, email address, eGMS identification number, review group assignment, or by the identification number of an application.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are updated on a continuing basis when reviewers are assigned to a review group and as new information is received. Records will be removed only in accordance with the disposition authority provided by IMLS records schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in this system by IMLS staff is controlled by password and dual factor authentication, with different levels of modification rights assigned to individuals and offices at IMLS based upon their specific job functions. Access limited to authorized personnel whose duties require such access, and to those functions necessary for the performance of their duties. IMLS provides grant applicants and peer review panelists individual accounts with access restricted to only those grant applications with which the individual is affiliated.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

NOTIFICATION PROCEDURES:

See 45 CFR part 1182.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 52540.

IMLS–3

SYSTEM NAME:

Federal Personnel and Payroll System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024, U.S. Department of Interior, Interior Business Center, Denver, Colorado.

SYSTEM MANAGER(S):

Human Resources Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2018 (20 U.S.C. 9101 *et seq.*); Federal Personnel Manual and Treasury Fiscal Requirements Manual.

PURPOSE(S) OF THE SYSTEM:

To document IMLS's personnel processes and to calculate and process payroll.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and personnel information, such as time and attendance data, statements of earnings and leave, training data, wage and tax statements, and payroll and personnel transactions. This system includes data that also is maintained in IMLS's official personnel folders, which are managed in accordance with Office of Personnel Management (OPM) regulations. The OPM has given notice of its system of records covering official personnel folders in OPM/GOVT–1.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of personnel and payroll processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be transmitted to the U.S. Department of Interior, Interior Business Center, U.S. Department of Treasury, and employee-designated financial institutions to affect issuance of paychecks to employees and distributions of pay according to employee directions for authorized purposes. Data in this system also may be used to prepare payroll, meet government recordkeeping and reporting requirements, and retrieve and apply payroll and personnel information as required for agency needs. See also the list of General and Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system are maintained off-site by the Department of Interior, Interior Business Center (IBC). Paper records generated through the NBC are maintained in file cabinets in secured storage areas by the Offices of the Chief Financial Officer and Human Resources after arriving at IMLS. Discipline offices also may use file cabinets in secured storage areas to maintain paper records concerning performance reviews and other personnel actions in their divisions.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, Social Security number, or date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Human Resources Officer maintains paper records in this system in accordance with the General Services Administration's General Records Schedule 2. Division offices may maintain paper records concerning performance reviews and other personnel actions in their divisions for the duration of an individual's employment with IMLS.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the electronic records in this system is controlled by password on the limited number of IMLS computers that can be used to draw information from the IBC. File cabinets containing the paper records in this system either are kept locked during non-business hours or are located in rooms that are kept locked during non-business hours.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

NOTIFICATION PROCEDURES:

See 45 CFR part 1182.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 52540.

IMLS–4

SYSTEM NAME:

Financial Management System—Delphi.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Enterprise Services Center, 6500 MacArthur Boulevard, Oklahoma City, OK 73169.

SYSTEM MANAGERS(S):

Office of the Chief Financial Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2018 (20 U.S.C. 9101 *et seq.*).

PURPOSE(S) OF THE SYSTEM:

To provide a central repository of all financial transactions to enable IMLS to meet its statutory reporting requirements to the Office of Management and Budget, the U.S. Department of Treasury, and Congress.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS, application reviewers, grantees, vendors and other Federal Government organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, telefax number, email address, payment

information, including banking information. This system data is maintained in an Oracle Database.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants, travel, and vendor processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the general administration of the grant management process and the IMLS accounting process. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system are maintained off-site by the Department of Transportation's Enterprise Services Center. Associated paper records are also maintained at the Enterprise Services Center. Discipline offices also may use locking file cabinets to maintain paper records concerning financial transactions processed in their divisions.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name and/or purchase order number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this database are maintained and updated on a daily basis as financial transactions are processed. Discipline offices maintain paper files that grow as financial transactions are submitted to the Enterprise Services Center for processing. Records are disposed of in accordance with the General Services Administration's General Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Authorized IMLS staff use passwords via a remote secure VPN to gain access to the database. Rooms containing the records in this system are kept locked during non-working hours.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

NOTIFICATION PROCEDURES:

See 45 CFR part 1182.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 52540.

Dated: October 3, 2019.

Amanda Bakale,

Assistant General Counsel, Institute of Museum and Library Services.

[FR Doc. 2019–21925 Filed 10–7–19; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation of the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 22 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Dance (review of applications): This meeting will be closed.

Date and time: November 4, 2019; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 6, 2019; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 6, 2019; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 7, 2019; 1:30 p.m. to 3:30 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 7, 2019; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 7, 2019; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2019; 12:00 p.m. to 2:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 14, 2019; 1:30 p.m. to 3:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 14, 2019; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 14, 2019; 3:00 p.m. to 5:00 p.m.

Media (review of applications): This meeting will be closed.

Date and time: November 18, 2019; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 18, 2019; 12:00 p.m. to 2:00 p.m.

Media (review of applications): This meeting will be closed.

Date and time: November 19, 2019; 11:30 a.m. to 1:30 p.m.

Media (review of applications): This meeting will be closed.

Date and time: November 19, 2019; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 19, 2019; 12:00 p.m. to 2:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 21, 2019; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 21, 2019; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 21, 2019; 2:30 p.m. to 4:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 22, 2019; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 22, 2019; 2:30 p.m. to 4:30 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: November 25, 2019; 2:00 p.m. to 4:00 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: November 26, 2019; 2:00 p.m. to 4:00 p.m.

Dated: October 3, 2019.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019–21911 Filed 10–7–19; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0196]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all notices of amendments issued, or proposed to be issued, from September 10, 2019, to September 23, 2019. The last biweekly notice was published on September 24, 2019.

DATES: Comments must be filed by November 7, 2019. A request for a hearing must be filed by December 9, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0196. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0196, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0196.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0196, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by

the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2 (Millstone 2), New London County, Connecticut

Date of amendment request: July 30, 2019. A publicly-available version is in ADAMS under Accession No. ML19218A177.

Description of amendment request: The amendment would reduce the Millstone 2 technical specification (TS) reactor coolant system (RCS) and secondary side-specific activity by 50 percent. The proposed changes are based on evaluations that were conducted to assess the radiological consequences following postulated design-basis main steam line break

(MSLB) and steam generator tube rupture (SGTR) accidents to address analysis deficiencies documented in the Millstone 2 corrective action program. A reduction in the TS RCS and secondary side-specific activity is necessary to meet the control room dose regulatory limit and would also provide inherent source term margin.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

RCS and secondary side specific activity are not initiators for any accident previously evaluated. Reanalyzing the MSLB and SGTR events does not require changes to any plant structures, systems, or components (SSCs) and therefore does not affect accident initiators. As a result, the proposed changes do not significantly increase the probability of an accident. The proposed TS change will limit primary coolant activity to concentrations consistent with the accident analyses. The proposed MSLB and SGTR design basis accident analyses demonstrate that the Exclusion Area Boundary, Low Population Zone, and Control Room doses are within the limits of 10 CFR 50.67, SRP [Standard Review Plan]–15.0.1, and RG [Regulatory Guide] 1.183. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change in specific activity limits and the reanalyzed MSLB and SGTR events do not alter any physical part of the plant, (*i.e.,* no new or different type of equipment will be installed), nor do they affect any plant operating parameter or create new accident precursors. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change in specific activity limits is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses. The proposed changes for radiological events related to the computer code used to calculate radiological dose consequences have been analyzed and result in acceptable consequences, meeting the criteria as specified in 10 CFR 50.67, SRP–15.0.1, and RG 1.183. The proposed changes will not result in plant operation in a configuration outside the analyses or design bases and do not adversely affect systems that are required to respond for safe shutdown of the plant and to maintain the plant in a safe operating condition. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: James G. Danna.

Dominion Energy Nuclear Connecticut, Inc. (DENC), Docket No. 50–423, Millstone Power Station, Unit No. 3 (Millstone 3), New London County, Connecticut

Date of amendment request: July 30, 2019. A publicly-available version is in ADAMS under Accession No. ML19217A208.

Description of amendment request: The amendment would revise the Millstone 3 Technical Specification (TS) 6.8.4.f, ''Containment Leakage Rate Testing Program,'' by replacing the reference to Regulatory Guide (RG) 1.163 with a reference to Nuclear Energy Institute (NEI) Topical Report NEI 94–01, Revision 3–A, and the limitations and conditions specified in NEI 94–01, Revision 2–A, as the implementing documents used to develop the Millstone 3 performance-based leakage testing program in accordance with option B of 10 CFR part 50, appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' The amendment would allow Dominion Energy Nuclear Connecticut, Inc. (DENC) to extend the primary containment integrated leak rate test (ILRT) interval for Millstone 3 to 15 years and Type C local leak rate test interval to 75 months, and incorporate the regulatory positions stated in RG 1.163.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the MPS3 [Millstone 3] Containment Leakage Rate Testing Program. The proposed amendment does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment function is to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators.

Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed amendment.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 3–A, and the limitations and conditions specified in NEI 94–01, Rev. 2–A, for development of the MPS3 performance-based leakage testing program. Implementation of these guidelines continues to provide adequate assurance that during design basis accidents, the primary containment and its components will limit leakage rates to less than the values assumed in the plant safety analyses. The potential consequences of extending the ILRT interval to 15 years have been evaluated by analyzing the resulting changes in risk. The increase in risk in terms of person-rem per year within 50 miles resulting from design basis accidents was estimated to be acceptably small and determined to be within the guidelines published in RG 1.17. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. DENC has determined that the increase in Conditional Containment Failure Probability due to the proposed change is very small.

Therefore, it is concluded that the proposed amendment does not significantly increase the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 3–A, and the limitations and conditions specified in NEI 94–01, Rev. 2–A, for development of the MPS3 performance-based leakage testing program, and establishes a 15-year interval for Type A testing and an interval of 75 months for Type C testing. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident; and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 3–A, and the limitations and conditions specified in NEI 94–01, Rev. 2–A, for the development of the MPS3 performance-based leakage testing program, and establishes a 15-year interval for Type A testing and an interval of 75 months for Type C testing. This amendment does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the Containment Leakage Rate Testing Program, as defined in the TS, ensure that the degree of primary containment structural integrity and leak-tightness that is considered in the plant's safety analysis is maintained. The overall containment leakage rate limit specified by the TS is maintained, and the Type A, Type B, and Type C containment leakage tests will be performed at the frequencies established in accordance with the NRC-accepted guidelines of NEI 94–01, Revision 3–A, and the limitations and conditions specified in NEI 94–01, Rev. 2–A.

Containment inspections performed in accordance with other plant programs serve to provide a high degree of assurance that the containment will not degrade in a manner that is not detectable by an ILRT. A risk assessment using the current MPS3 PRA [probabilistic risk assessment] model concluded that extending the ILRT test interval from 10 years to 15 years results in a small change to the MPS3 risk profile.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–010, 50–237, and 50–249, Dresden Nuclear Power Station, Units 1, 2, and 3, Grundy County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–171, 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 1, 2, and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 28, 2019. A publicly-available version is in ADAMS under Accession No. ML19240B609.

Description of amendment request: The amendments would delete certain facility operating license (FOL) conditions that specify requirements for decommissioning trust agreements for these facilities. The amendments would also delete some obsolete license conditions associated with completed license transfers for these facilities. The decommissioning trust fund requirements in 10 CFR 50.75(h) would become applicable to these facilities if the amendments are approved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested changes delete license conditions pertaining to Decommissioning Trust Agreements currently in the FOL. The requested changes are consistent with the types of license amendments permitted in 10 CFR 50.75(h)(4).

The regulations of 10 CFR 50.75(h)(4) state: ''Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves ''no significant hazard considerations.''

This request involves changes that are administrative in nature. No actual plant equipment or accident analyses will be affected by the proposed changes.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves administrative changes to the license that will be consistent with the 10 CFR 50.75(h). No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This request involves administrative changes to the license that will be consistent with the 10 CFR 50.75(h). No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Lisa M. Regner.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: August 27, 2019. A publicly-available version is in ADAMS under Accession No. ML19241A242.

Description of amendment request: The amendment would revise the reactor coolant pump (RCP) motor flywheel examination frequency from the currently approved 10-year inspection interval to an interval not to exceed 20 years. The changes are consistent with Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–421, ''Revision to RCP Flywheel Inspection Program (WCAP–15666).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided (via incorporation by reference) its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability of Consequences of an Accident Previously Evaluated

The proposed change to the RCP flywheel examination frequency does not change the response of the plant to any accidents. The RCP will remain highly reliable and the proposed change will not result in a significant increase in the risk of plant operation. Given the extremely low failure probabilities for the RCP motor flywheel during normal and accident conditions, the extremely low probability of a loss-of-coolant accident with loss of offsite power, and assuming a conditional core damage probability of 1.0 (complete failure of safety systems), the core damage frequency and change in risk would still not exceed the NRC's acceptance guidelines contained in RG [Regulatory Guide] 1.174 (<1.0E–6 per year). Moreover, considering the uncertainties involved in this evaluation, the risk associated with the postulated failure of an RCP motor flywheel is significantly low. Even if all four RCP motor flywheels are considered in the bounding plant configuration case, the risk is still acceptably low.

The proposed change does not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or configuration of the facility, or the manner in which the plant is operated and maintained; alter or prevent the ability of structures, systems, components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits; or affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the type or amount of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change in flywheel inspection frequency does not involve any change in the design or operation of the RCP. Nor does the change to examination frequency affect any existing accident scenarios, or create any new or different accident scenarios. Further, the change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or alter the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements, and does not alter any assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RG 1.174. There are no significant mechanisms for inservice degradation of the RCP flywheel. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Acting Branch Chief: Lisa M. Regner.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 9, 2019. A publicly-available version is in ADAMS under Accession No. ML19221B669.

Description of amendment request: The amendment proposes to depart from Updated Final Safety Analysis Report Tier 2 information (which includes the plant-specific Design Control Document (DCD) Tier 2 information) and involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated Combined License (COL) Appendix C information. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, appendix D, Design Certification Rule is also requested for the plant-specific DCD Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise the COL and licensing basis documents to add Onsite Standby Diesel Generator loads identified as required for orderly plant shutdown, defense-in-depth, and prevention of automatic passive safety-related system actuation following anticipated operational occurrences, to prevent duplication of testing by deleting [Inspections, Tests, Analyses and Acceptance Criteria] ITAAC 2.6.01.04c for the function of Onsite Standby Diesel Generator breaker closing and combining with ITAAC 2.6.04.02a, and to provide editorial updates.

The proposed non-technical change to COL Appendix C consolidates ITAAC to improve efficiency of the ITAAC completion and closure process. No structure, system, or component (SSC) design or function is affected. No design or safety analysis is affected. The proposed changes do not affect any accident initiating event or component failure, thus the probabilities of the accidents previously evaluated are not affected. No function used to mitigate a radioactive material release and no radioactive material release source term is involved, thus the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes would revise the COL and licensing basis documents to add Onsite Standby Diesel Generator loads identified as required for orderly plant shutdown, defense-in-depth, and prevention of automatic passive safety-related system actuation following anticipated operational occurrences, to prevent duplication of testing by deleting ITAAC 2.6.01.04c for the function of Onsite Standby Diesel Generator breaker closing and combining with ITAAC 2.6.04.02a, and to provide editorial updates.

The proposed change to COL Appendix C does not affect the design or function of any SSC but consolidates ITAAC to improve efficiency of the ITAAC completion and closure process. The proposed changes would not introduce a new failure mode, fault or sequence of events that could result in a radioactive material release.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes would revise the COL and licensing basis documents to add Onsite Standby Diesel Generator loads identified as required for orderly plant shutdown, defense-in-depth, and prevention of automatic passive safety-related system actuation following anticipated operational occurrences, to prevent duplication of testing by deleting ITAAC 2.6.01.04c for the function of Onsite Standby Diesel Generator breaker closing and combining with ITAAC 2.6.04.02a, and to provide editorial updates.

The proposed change to COL Appendix C to consolidate ITAAC to improve efficiency of the ITAAC completion and closure process is considered non-technical and would not affect any design parameter, function or analysis.

There would be no change to an existing design basis, design function, regulatory criterion, or analysis. No safety analysis or design basis acceptance limit/criterion is involved.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

IV. Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One (ANO), Units 1 and 2, Pope County, Arkansas

Date of amendment request: September 5, 2019. A publicly-available version is in ADAMS under Accession No. ML19248C601.

Brief description of amendment request: The proposed amendments would extend the implementation dates for License Amendment Nos. 263 and 314 for ANO, Units 1 and 2, respectively, from October 30, 2019, to January 14, 2020. These amendments, which were issued on January 17, 2019, approved an update to the ANO Emergency Plan to adopt a revised Emergency Action Level scheme.

Date of publication of individual notice in ***Federal Register:*** September 19, 2019 (84 FR 49349).

Expiration date of individual notice: October 21, 2019 (public comments); November 18, 2019 (hearing requests).

V. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: January 10, 2018, as supplemented by letters dated November 2, 2018, February 13, 2019, and April 8, 2019.

Brief description of amendments: The amendments revised the licensing basis by the addition of a license condition, to allow for the implementation of the provisions of 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors.''

Date of issuance: September 17, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—292; Unit 2—320. A publicly-available version is in ADAMS under Accession No. ML19149A471; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: The amendments revised the renewed facility operating licenses.

Date of initial notice in ***Federal Register:*** May 22, 2018 (83 FR 23731). The supplemental letters dated November 2, 2018, February 13, 2019,

and April 8, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2019.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 1, 2018, as supplemented by letters dated October 18, 2018, and April 23, 2019.

Brief description of amendment: The amendment revised the licensing basis of Shearon Harris Nuclear Power Plant, Unit 1, by voluntarily adopting 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components.''

Date of issuance: September 17, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No: 174. A publicly-available version is in ADAMS under Accession No. ML19192A012; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: The amendment revised the renewed facility operating license.

Date of initial notice in ***Federal Register:*** May 22, 2018 (83 FR 23731). The supplemental letters dated October 18, 2018, and April 23, 2019, 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 original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 2019.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 30, 2019, as supplemented by letters dated September 24, 2018, and December 27, 2018.

Brief description of amendment: The amendment revised Technical Specification (TS) Table 2.2–1, ''Reactor Trip System Instrumentation Trip Setpoints,'' and TS Table 3.3–4, ''Engineered Safety Features Actuation System Instrumentation Trip Setpoints,'' to optimize safety analysis margin in the Final Safety Analysis Report Chapter 15 transient analyses. It also removed the high-power range high negative neutron flux rate trip from the TSs.

Date of issuance: September 19, 2019.

Effective date: As of the date of issuance and shall be implemented prior to the startup of Cycle 23.

Amendment No.: 175. A publicly-available version is in ADAMS under Accession No. ML19225C069; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: The amendment revised the renewed facility operating license and TSs.

Date of initial notice in ***Federal Register:*** February 12, 2019 (84 FR 3508). The supplemental letters dated September 24, 2018, and December 27, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's initial proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2019.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One (ANO), Units 1 and 2, Pope County, Arkansas

Entergy Operations, Inc.; System Energy Resources, Inc.; Cooperative Energy, A Mississippi Electric Cooperative; and Entergy Mississippi, LLC, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (Grand Gulf), Claiborne County, Mississippi

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating (Indian Point) Unit Nos. 2 and 3, Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (Palisades), Van Buren County, Michigan

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (River Bend), West Feliciana Parish, Louisiana

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: January 31, 2019, as supplemented by letter dated May 23, 2019.

Brief description of amendments: The amendments revised the technical specifications (TSs) for each of these facilities based on Technical Specifications Task Force (TSTF) Traveler TSTF–529, Revision 4, ''Clarify Use and Application Rules.'' Specifically, the changes revised and clarified the TS usage rules for completion times, limiting conditions for operation, and surveillance requirements.

Date of issuance: September 11, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 265 (ANO–1); 316 (ANO–2); 221 (Grand Gulf); 291 (Indian Point 2), 266 (Indian Point 3); 270 (Palisades); 199 (River Bend); and 255 (Waterford 3). A publicly-available version is in ADAMS under Accession No. ML19175A042; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License No. NPF–29: The amendments revised the renewed facility operating licenses and TSs.

Date of initial notice in ***Federal Register:*** April 9, 2019 (84 FR 14145). The supplemental letter dated May 23, 2019, 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 original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Date of amendment request: August 31, 2018, as supplemented by letter dated February 22, 2019.

Brief description of amendments: The amendments revised the emergency response organization positions identified in the emergency plan for each site.

Date of issuance: September 13, 2019.

Effective date: As of the date of issuance and shall be implemented on or before December 31, 2019.

Amendment Nos.: Calvert Cliffs—331/309; FitzPatrick—328; and Nine Mile Point—238/177. A publicly-available version is in ADAMS under Accession No. ML19204A063. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–53, DPR–69, DPR–59, DPR–63, and NPF–69: The amendments revised the emergency plans.

Date of initial notice in ***Federal Register:*** October 9, 2018 (83 FR 50696). The supplemental letter 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 original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 2019.

No significant hazards consideration comments received: No.

Oyster Creek Environmental Protection, LLC and Holtec Decommissioning International, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station (Oyster Creek), Ocean County, New Jersey

Date of application for amendment: November 12, 2018, as supplemented by letter dated March 7, 2019.

Brief description of amendment: The amendment removed the existing Cyber Security Plan (CSP) requirements contained in License Condition 2.C.(4) of the Oyster Creek Renewed Facility Operating License and the commitment to fully implement the CSP by the Milestone 8 commitment date of August 31, 2021 (ADAMS Accession No. ML17289A222).

Date of issuance: September 18, 2019.

Effective date: As of the date the licensee notifies the NRC in writing that all spent nuclear fuel assemblies have been transferred out of the spent fuel pool and have been placed in dry storage within the independent spent fuel storage installation, and shall be implemented within 60 days of the effective date.

Amendment No.: 298. A publicly-available version is in ADAMS under Package Accession No. ML19179A202; documents related to this amendment are referenced in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–16: This amendment revised the renewed facility operating license.

Date of initial notice in ***Federal Register:*** December 18, 2018 (83 FR 64892).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2019.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 22, 2019.

Brief description of amendment: The amendment adopted Technical Specifications Task Force (TSTF) Traveler TSTF–564, Revision 2, ''Safety Limit MCPR [Minimum Critical Power Ratio],'' which revises the Hope Creek Generating Station technical specification (TS) safety limit on MCPR to reduce the need for cycle-specific changes to the value, while still meeting the regulatory requirement for a safety limit.

Date of issuance: September 19, 2019.

Effective date: As of the date of issuance and shall be implemented prior to restart following Refueling Outage H1R22.

Amendment No.: 219. A publicly-available version is in ADAMS under Accession No. ML19218A305; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–57: The amendment revised the renewed facility operating license and TSs.

Date of initial notice in ***Federal Register:*** May 21, 2019 (84 FR 23074).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: April 23, 2019.

Brief description of amendments: The amendments revised the technical specification (TS) safety limit (SL) on minimum critical power ratio (MCPR) to reduce the need for cycle-specific changes to the value, while still meeting the regulatory requirement for an SL, by adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–564, ''Safety Limit MCPR,'' Revision 2, which is an approved change to the Improved Standard Technical Specifications, into the Hatch Nuclear Power Plant, Units 1 and 2 TS.

Date of issuance: September 20, 2019.

Effective date: As of the date of issuance and shall be implemented prior to reaching Mode 4 following Refueling Outage 1 R29 (spring 2020) or within 270 days from the date of issuance, whichever is later.

Amendment Nos.: 299—Unit 1; 244—Unit 2. A publicly-available version is in ADAMS under Accession No. ML19212A054; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: The amendments revised the renewed facility operating licenses and TSs.

Date of initial notice in ***Federal Register:*** July 2, 2019 (84 FR 31637).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 16, 2018, as supplemented by letter dated March 21, 2019.

Brief description of amendments: The amendments added a license condition to allow for the adoption of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors.'' The provisions of 10 CFR 50.69 allow improved focus on equipment that has safety significance, resulting in improved plant safety.

Date of issuance: September 18, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 346—Unit 1; 340—Unit 2. A publicly-available version is in ADAMS under Accession No. ML19179A135; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–77 and DPR–79: The amendments revised the renewed facility operating licenses.

Date of initial notice in ***Federal Register:*** August 28, 2018 (83 FR 43908). The supplemental letter dated March 21, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 2019.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station (North Anna), Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: April 30, 2018, as supplemented by letters dated May 24 and August 8, 2019.

Brief description of amendments: The amendments revised the North Anna Unit Nos. 1 and 2 technical specifications (TSs) to add operability requirements, required actions, and surveillance requirements for the new 4160-volt emergency bus voltage unbalance protection system.

Date of issuance: September 12, 2019.

Effective date: As of the date of issuance and shall be implemented by the completion of the fall 2019 refueling outage for North Anna Unit 1 and the fall 2020 refueling outage for North Anna Unit 2.

Amendment Nos.: 282—Unit 1; 265—Unit 2. A publicly-available version is in ADAMS under Accession No. ML19238A127; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License No. NPF–4 and NPF–7: The amendments revised the renewed facility operating licenses and TSs.

Date of initial notice in ***Federal Register:*** September 11, 2018 (83 FR 45989). The supplemental letters dated May 24, 2019, and August 8, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 27th day of September 2019.

For the Nuclear Regulatory Commission.

Jamie M. Heisserer,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–21447 Filed 10–7–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0189]

Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced appointments to the NRC Performance Review Board (PRB) responsible for making recommendations on performance appraisal ratings and performance awards for NRC Senior Executives and Senior Level System employees and appointments to the NRC PRB Panel responsible for making recommendations to the appointing and awarding authorities for NRC PRB members.

DATES: October 8, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0189 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 *http://www.regulations.gov* and search for Docket ID NRC–2019–0189. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *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: Miriam L. Cohen, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–0747, email: *Miriam.Cohen@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following individuals appointed as members of the NRC PRB are responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees:

Margaret M. Doane, Executive Director for Operations
Marian L. Zobler, General Counsel
Daniel H. Dorman, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations
Laura A. Dudes, Regional Administrator, Region-II
Brian E. Holian, Director, Office of Nuclear Security and Incident Response
John W. Lubinski, Director, Office of Nuclear Materials Safety and Safeguards
Nader L. Mamish, Director, Office of International Programs

David J. Nelson, Chief Information Officer
Ho K. Nieh, Director, Office of Nuclear Reactor Regulation
K. Steven West, Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs, Office of the Executive Director for Operations
Maureen E. Wylie, Chief Financial Officer

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Brooke P. Clark, Director, Deputy General Counsel for Hearings and Administration
Raymond V. Furstenau, Director, Office of Nuclear Regulatory Research
Darrell J. Roberts, Regional Administrator, Region-III

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

Dated at Rockville, Maryland, this 3rd day of October, 2019.

For the Nuclear Regulatory Commission.

Miriam L. Cohen,

Secretary, Executive Resources Board.

[FR Doc. 2019–21927 Filed 10–7–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 7, 14, 21, 28, November 4, 11, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 7, 2019

There are no meetings scheduled for the week of October 7, 2019.

Week of October 14, 2019—Tentative

There are no meetings scheduled for the week of October 14, 2019.

Week of October 21, 2019—Tentative

There are no meetings scheduled for the week of October 21, 2019.

Week of October 28, 2019—Tentative

Tuesday, October 29, 2019

10:00 a.m. Transformation at the NRC—Becoming a Modern, Risk-Informed Regulator (Public Meeting); (Contact: Alysia Bone: 301–415–1034)

Week of November 4, 2019—Tentative

There are no meetings scheduled for the week of November 4, 2019.

Week of November 11, 2019—Tentative

There are no meetings scheduled for the week of November 11, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 4th day of October 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–22066 Filed 10–4–19; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC–2019–0176]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of amendment requests for Vogtle Electric Generating Plant, Units 3 and 4. For the amendment requests, the NRC proposes to determine that they involve no significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI) an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by November 7, 2019. A request for a hearing must be filed by December 9, 2019. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by October 18, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0176. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001; telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0176, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0176.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0176 facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for the proposed determination for the amendment requests is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day notice period provided that its final determination is that the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the

issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the

proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: July 16, 2019. A publicly-available version is in ADAMS under Accession No. ML19197A278.

Description of amendment request: These amendment requests contain sensitive unclassified non-safeguards information (SUNSI). The requested amendments propose to depart from Updated Final Safety Analysis Report Tier 2 information (which includes the plant-specific Design Control Document (DCD) Tier 2 information) and involve related changes to plant-specific Tier 1 information, with corresponding changes to the associated Combined License Appendix C information. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design, as certified in the 10 CFR part 52, appendix D, Design Certification Rule, is also requested for the plant-specific DCD Tier 1 material departures.

Specifically, the requested amendments propose changes to incorporate the contribution of design-basis passive residual heat removal heat exchanger leakage to the in-containment refueling water storage tank (IRWST) into normal operating doses. The change to normal operating doses involves crediting the northeast wall and west wall of the IRWST as radiation shielding walls in plant-specific Tier 1 (and associated Combined License Appendix C) Table 3.3–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes incorporate the contribution of design basis fuel defects and passive residual heat removal (PRHR) heat exchanger (HX) leakage to the in-containment refueling water storage tank (IRWST) into normal operating doses.

To reduce the dose rates in the vicinity of the IRWST, this proposed change involves crediting the north-east wall and west wall of the IRWST as radiation shielding walls. There is no physical change to the size, thickness, configuration, or materials of construction of the IRWST walls. The change uses the existing sizes, thicknesses, configurations, and materials of construction in calculating radiation levels in areas adjacent to the side of the walls opposite the sources of radiation within the IRWST.

As part of this proposed change, the potential increase in radioactive contamination of the IRWST is accounted for in the plant-specific estimates of the radiation doses incurred by equipment during normal operation. These doses are considered in the equipment qualification (EQ) of safety-related and important-to-safety equipment. However, there is no impact to EQ, because such equipment is either not located where it would incur the estimated dose or is qualified for more severe doses (*e.g.,* severe accident doses). Therefore, there is no impact to the capability of safety-related and important-to-safety equipment to perform their functions credited in reducing the probability, or mitigating the consequences, of an accident.

The proposed changes to the radiation zones around the IRWST only involve normal operations/shutdown and are localized to specific areas within and above the IRWST. No post-accident radiation zones are changed by this activity.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes incorporate the contribution of design basis fuel defects and PRHR HX leakage to the IRWST into normal operating doses and involves crediting the north-east wall and west wall of the IRWST as radiation shielding walls.

The crediting of the north-east wall and west wall of the IRWST as radiation shielding walls utilizes the existing size, thickness, configuration, or materials of construction of the IRWST walls. There is no physical change to the size, thickness, configuration, or materials of construction of the IRWST walls.

Therefore, the proposed amendment does not create the possibility of a new or different

kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes incorporate the contribution of design basis fuel defects and PRHR HX leakage to the IRWST into normal operating doses and involves crediting the north-east wall and west wall of the IRWST as radiation shielding walls.

As part of this proposed change, the potential increase in radioactive contamination of the IRWST is accounted for in the plant-specific estimates of the radiation doses incurred by equipment during normal operation. These doses are considered in the equipment qualification (EQ) of safety-related and important-to-safety equipment. However, there is no impact to EQ, because such equipment is either not located where it would incur the estimated dose or is qualified for more severe doses (*e.g.,* severe accident doses). Therefore, there is no impact to the capability of safety-related and important-to-safety equipment to perform their functions such that there is a reduction in a margin of safety.

The crediting of the north-east wall and west wall of the IRWST as radiation shielding walls utilizes the existing size, thickness, configuration, or materials of construction of the IRWST walls. There is no physical change to the size, thickness, configuration, or materials of construction of the IRWST walls. Therefore, there is no change to design margin of the IRWST walls or design margin of the IRWST volume.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards considerations.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 13th day of September, 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2019–20202 Filed 10–7–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–1 and CP2020–1]

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 10, 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.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–1 and CP2020–1; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 100 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 2, 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 10, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–21963 Filed 10–7–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 8:00 a.m., October 17, 2019.

PLACE: 8th Floor Board Conference Room, 844 North Rush Street, Chicago, Illinois 60611.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

(1) Consideration of the Management Member's proposal relating to the Chief Medical Officer position

(2) Update from the Chief Actuary on Wisconsin Central

(3) Procedural issues related to hiring and Board approval/notification

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Authority: 5 U.S.C. 552b.

Dated: October 4, 2019.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2019–22113 Filed 10–4–19; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87198; File No. SR–NASDAQ–2019–064]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Certain Cutoff Times for On-Close Orders Entered for Participation in the Nasdaq Closing Cross and Adopt a Second Reference Price for Limit-On-Close Orders

October 2, 2019.

I. Introduction

On July 31, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain cutoff times for on-close orders entered for participation in the Nasdaq Closing Cross and adopt a Second Reference Price for limit-on-close orders. The proposed rule change was published for comment in the **Federal Register** on August 19, 2019.[3] On September 6, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.[4] The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Nasdaq Closing Cross is the Exchange's process for determining the price at which orders would be executed at the close and for executing those orders.[5] Currently, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86642 (August 13, 2019), 84 FR 42964.

[4] In Amendment No. 1, the Exchange revised the proposal to: (1) Specify the time during which market-on-close orders can be cancelled or modified; (2) remove proposed changes to the Nasdaq Pricing Schedule in Equity 7, Section 118; (3) include additional description, examples, and justification related to the proposed rule change; and (4) make technical, clarifying, and conforming changes. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-064/srnasdaq2019064-6088461-191827.pdf.*

[5] *See* Rule 4754(a)(6).

disseminates the Order Imbalance Indicator (''NOII'') for the Nasdaq Closing Cross beginning at 3:55 p.m. ET or five minutes prior to the early closing time on a day when the Exchange closes early.[6] The NOII is an electronically disseminated message containing information about market-on-close (''MOC''),[7] limit-on-close (''LOC''),[8] and imbalance only (''IO'') [9] orders, as well as close eligible interest [10] and the price at which those orders would execute at the time of the NOII dissemination.[11] The Exchange recently also adopted rules for the early order imbalance indicator (''EOII''), which the Exchange will begin disseminating at 3:50 p.m. ET or ten minutes prior to the early closing time on a day when the Exchange closes early [12] and will contain a subset of the information comprising the NOII.[13] The Exchange intends to implement the EOII in conjunction with the changes in the current proposal.[14]

Currently, pursuant to Rule 4702(b)(11)(A), MOC orders can be entered, cancelled, or modified between 4:00 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, a MOC order can be cancelled or modified only if the participant requests that the Exchange correct a legitimate error in the order.[15] MOC orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. The Exchange proposes to amend this rule to provide that MOC orders can be cancelled or modified between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET and that, between 3:50 p.m. ET and immediately prior to 3:58 p.m. ET, a MOC order can be cancelled or modified only if the participant requests that the Exchange correct a legitimate error in the order.

Currently, pursuant to Rule 4702(b)(13)(A), an IO order can be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but cannot be cancelled or modified at or after 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, however, an IO order can be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order. IO orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. The Exchange proposes to amend this rule to provide that IO orders cannot be cancelled or modified at or after 3:50 p.m. ET, except that, between 3:50 p.m. ET and immediately prior to 3:58 p.m. ET, an IO order can be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order.

Currently, pursuant to Rule 4702(b)(12)(A), LOC orders can be entered, cancelled, or modified between 4:00 a.m. ET and immediately prior to 3:55 p.m. ET. A LOC order can be entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET (''Late LOC order'') provided that there is a First Reference Price.[16] Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, LOC orders can be cancelled (but not modified) only if the participant requests that the Exchange correct a legitimate error in the order. Currently, a Late LOC order will be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for a Late LOC order to buy (sell), in which case the Late LOC order will be handled consistent with the participant's instruction that the Late LOC order is to be either: (1) Rejected; or (2) re-priced to the First Reference Price, provided that if the First Reference Price is not at a permissible minimum increment, the First Reference Price will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance.[17]

The Exchange proposes to amend Rule 4702(b)(12)(A) to provide that LOC orders can be cancelled or modified between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, a LOC order can be entered but can only be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, a LOC order can only be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order.

The Exchange also proposes to amend Rule 4702(b)(12)(A) to permit a Late LOC order to be entered if there is either a First Reference Price or a Second Reference Price. In connection with this proposed change, the Exchange proposes to amend the definition of First Reference Price in Rule 4754(a)(9) to refer to the Current Reference Price in the EOII disseminated at 3:50 p.m. ET, or ten minutes prior to the early closing time on a day the Exchange closes early. The Exchange also proposes to add a new definition of Second Reference Price in Rule 4754(a)(11) to refer to the Current Reference Price in the NOII disseminated at 3:55 p.m. ET, or five minutes prior to the early closing time on a day the Exchange closes early.

Moreover, the Exchange proposes to amend Rule 4702(b)(12)(A) to provide that a Late LOC order to buy (sell) will be accepted at its limit price, unless its limit price is higher (lower) than the higher (lower) of the First Reference Price and the Second Reference Price, in which case the Late LOC order will be handled consistent with the participant's instruction that the Late LOC order is to be either: (1) Rejected; or (2) re-priced to the higher (lower) of the First Reference Price and the Second Reference Price.[18] If the First Reference Price for a security is zero, Late LOC orders to buy (sell) will be priced at the lower (higher) of the Second Reference Price and the order's limit price. If the

[6] *See* Rule 4754(b)(1)(B).

[7] A MOC order is an order entered without a price that can be executed only during the Nasdaq Closing Cross. *See* Rule 4702(b)(11).

[8] A LOC order is an order entered with a price that can be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC order was entered. *See* Rule 4702(b)(12).

[9] An IO order is an order entered with a price that can be executed only in the Nasdaq Closing Cross and only against MOC orders or LOC orders. *See* Rule 4702(b)(13).

[10] Close eligible interest is any quotation or any order that can be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC. *See* Rule 4754(a)(1).

[11] *See* Rule 4754(a)(7).

[12] *See* Rule 4754(b)(1)(A).

[13] *See* Securities Exchange Act Release No. 85292 (March 12, 2019), 84 FR 9848 (March 18, 2019) (SR–NASDAQ–2019–010).

[14] *See* Amendment No. 1, *supra* note 4, at 4.

[15] A legitimate error for a MOC, LOC, or IO order includes an error in the side, size, symbol, or price, or the duplication of an order, as set forth in the applicable rule for each order type. *See id.* at 5 n.9. *See also* Rule 4702(b)(11)(A), (12)(A), and (13)(A).

[16] ''First Reference Price'' is currently defined as ''the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:55 p.m. ET.'' *See* Rule 4754(a)(9). ''Current Reference Price'' means: (i) The single price that is at or within the current Nasdaq market center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired; (ii) if more than one price exists under (i), the price that minimizes any imbalance; (iii) if more than one price exists under (ii), the entered price at which shares will remain unexecuted in the cross; and (iv) if more than one price exists under (iii), the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination. *See* Rule 4754(a)(7)(A).

[17] The default configuration for participants that do not specify otherwise is to have Late LOC orders re-priced rather than rejected. *See* Rule 4702(b)(12)(A).

[18] If either the First Reference Price or the Second Reference Price is not at a permissible minimum increment, the First Reference Price or the Second Reference Price, as applicable, will be rounded: (i) To the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance; (ii) up if there is a buy imbalance; or (iii) down if there is a sell imbalance. *See* proposed Rule 4702(b)(12)(A). As is currently the case, the default configuration for participants that do not specify otherwise will be to have Late LOC orders re-priced rather than rejected. *See id.*

Second Reference Price for a security is zero, Late LOC orders to buy (sell) will be priced at the lower (higher) of the First Reference Price and the order's limit price. If both the First Reference Price and Second Reference Price are zero, all Late LOC orders to buy or sell will be rejected.[19]

Finally, the Exchange proposes to replace the term ''Eligible Interest'' with the defined term ''Close Eligible Interest'' in the definition of ''Near Clearing Price'' in Rule 4754(a)(7)(E)(ii) to correct an inadvertent error.[20]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed above, the Exchange proposes to expand the time periods during which MOC, LOC, and IO orders can be cancelled or modified only if the participant requests that the Exchange correct a legitimate error in the order (*i.e.,* from between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, to between 3:50 p.m. ET and immediately prior to 3:58 p.m. ET). The Commission believes that the proposal could reduce the possibility of large price movements in the Nasdaq Closing Cross process that may result from modifications and cancellations of MOC, LOC, and IO orders starting at 3:50 p.m. ET in response to the EOII.[23] The Commission also notes that the time periods for entering MOC, LOC, and IO orders remain unchanged, and participants may consider information in the EOII and NOII, as applicable, in entering these orders.

In addition, as discussed above, the Exchange proposes to permit the entry of Late LOC orders provided that there is either a First Reference Price or a Second Reference Price, and to permit a Late LOC order to be priced at the more aggressive of the First Reference Price, Second Reference Price, or its limit price. The Commission believes that the proposal may encourage additional participation in the Nasdaq Closing Cross by allowing participants to consider the information disseminated in both the EOII and NOII in making decisions with respect to the use of Late LOC orders. Moreover, the proposal may increase participation in the Nasdaq Closing Cross because, under the proposal, a Late LOC order with a limit price that is more aggressive than the Second Reference Price would not be rejected or re-priced if its limit price is less aggressive than the First Reference Price.[24]

The Commission also believes the proposal to replace the term ''Eligible Interest'' with the defined term ''Close Eligible Interest'' in the definition of ''Near Clearing Price'' in Rule 4754(a)(7)(E)(ii) is consistent with the Act because using a defined term would render the rule text more precise and accurate.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–064, and should be submitted on or before October 29, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange revised the proposal to: (1) Specify the time during which MOC orders can be cancelled or modified; (2) remove proposed changes to the Nasdaq Pricing Schedule in Equity 7, Section 118; (3) include additional description, examples, and justification related to the proposed rule change; and (4) make technical, clarifying, and conforming changes. The Commission believes that Amendment No. 1 does not raise any novel regulatory issues or make any significant substantive changes to the

[19] See Amendment No. 1, *supra* note 4, for additional description and examples of the proposed rule change.

[20] *See id.* at 10.

[21] 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).

[22] 15 U.S.C. 78f(b)(5).

[23] The proposal could also result in an increased number of MOC, LOC, and IO orders that participate in the Nasdaq Closing Cross because it restricts the cancellation and modification of these orders by providing for a longer period of time during which these orders can only be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order.

[24] Currently, a Late LOC order with a limit price that is more aggressive than the Second Reference Price (which is currently defined as the ''First Reference Price'') is either rejected or re-priced to the Second Reference Price.

original proposal, which was subject to a full notice and comment period during which no comments were received. The Commission also notes that Amendment No. 1 provides additional accuracy, clarity, and justification to the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[25] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASDAQ–2019–064), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21883 Filed 10–7–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87199; File No. SR–MIAX–2019–37]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Order Approving a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders, To Adopt New Interpretation and Policy .07, SPIKES Combo Orders

October 2, 2019.

I. Introduction

On August 9, 2019, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the trading of SPIKES Combo Orders.[3] The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.[4] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend MIAX Rule 518, Complex Orders, to adopt new Interpretation and Policy .07 to provide for the trading of SPIKES Combo Orders. A SPIKES Combo Order is an order to purchase or sell one or more SPIKES option series and the offsetting number of SPIKES Combinations defined by the delta.[5] A SPIKES Combination is a purchase (sale) of a SPIKES call option and the sale (purchase) of a SPIKES put option having the same expiration date and strike price.[6] The delta is the positive (negative) number of SPIKES Combinations that must be sold (purchased) to establish a market neutral hedge with one or more SPIKES option series.[7]

Under the proposed rule, a SPIKES Combo Order may not have a ratio greater than eight options to one Spikes Combination.[8] In addition, a SPIKES Combo Orders will be subject to all of the provisions in MIAX Rule 518 that are applicable to complex orders, other than the requirement that the component legs of a complex order have a ratio that is equal to or greater than one-to-three and less than or equal to three-to-one.[9] The proposal is designed to facilitate delta neutral hedging for SPIKES options.[10] MIAX states that delta hedging aims to reduce the risk associated with price movements in the underlying asset.[11] MIAX notes that an options position may be delta hedged with other options [12] or with shares of the underlying stock.[13] Although SPIKES options, which are based on an index, do not have an underlying stock that may serve as a hedge, a SPIKES Combination Order creates a synthetic underlying position that is the functional equivalent of the stock leg of a stock-option order.[14] MIAX believes that permitting SPIKES Combo Orders with an 8:1 ratio will align the treatment of SPIKES Combo Orders with the treatment of stock-option orders and permit additional hedging opportunities.[15]

MIAX states that it has the system capacity and capability to handle the potential increase in transaction rates that could result from the trading of SPIKES Combo Orders.[16] In addition, MIAX states that it will have surveillance to monitor compliance with the Exchange's rules, specifically as they pertain to delta neutral transactions.[17]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act,[18] and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section

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[25] 15 U.S.C. 78s(b)(2).

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SPIKES Combo Orders are comprised of multiple series of SPIKES™ Index (''SPIKES'') options. The SPIKES Index measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (''SPY''). *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (File No. SR–MIAX–2018–14) (approving the listing and trading of SPIKES Index options).

[4] *See* Securities Exchange Act Release No. 86682 (August 14, 2019), 84 FR 43212 (''Notice'').

[5] *See* proposed MIAX Rule 518, Interpretation and Policy .07(a)(3).

[6] *See* proposed MIAX Rule 518, Interpretation and Policy .07(a)(1).

[7] *See* proposed MIAX Rule 518, Interpretation and Policy .07(a)(2). The delta is a measure of the change in an option's price resulting from a change in the underlying security. *See* Notice, 84 FR at 43212.

[8] *See* proposed MIAX Rule 518, Interpretation and Policy .07(a)(4). MIAX notes that its rules governing stock-option orders currently permit the trading of stock-option orders with an 8:1 ratio, where the ratio represents the number of option contracts to the underlying security. *See* Notice, 84 FR at 43214. *See also* MIAX Rule 518(a)(5) (defining stock-option order as an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share) or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security (*i.e.,* contracts) in the option leg to the total number of units of the underlying security (*i.e.,* 100 shares) or convertible security in the stock leg).

[9] *See* proposed MIAX Rule 518, Interpretation and Policy .07(a)(4)(i). MIAX's rules defines a complex order as any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. *See* MIAX Rule 518(a)(5).

[10] *See* Notice, 84 FR at 43214.

[11] *See id.* at 43213.

[12] For example, a call option with a delta of 0.50 could be hedged by a put option with a delta of −0.50, resulting in a position with a delta of zero. *See id.*

[13] *See id.*

[14] *See id.* at 43214.

[15] MIAX notes that market participants that transact in SPIKES options currently may submit complex orders that are delta neutral as long as the ratio for the component legs of the transaction conforms to the current 1:3/3:1 ratio applicable to complex orders. *See id.*

[16] *See id.* at 43215.

[17] *See id.*

[18] 15 U.S.C. 78f.

[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).

6(b)(5) of the Act,[20] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal will protect investors and the public interest by helping market participants to hedge positions in SPIKES options and execute delta neutral trading strategies involving SPIKES options. All of the provisions in MIAX Rule 518 that are applicable to complex orders will apply to SPIKES Combo Orders, other than the requirement that the component legs of a complex order have a ratio that is equal to or greater than one-to-three and less than or equal to three-to-one.[21] The Commission notes that permitting SPIKES Combo Orders to have a ratio of no more than eight options to one SPIKES Combination is consistent with the 8:1 ratio permitted for stock-option orders.[22] As noted above, a SPIKES Combination Order creates a synthetic underlying position that is the functional equivalent of the stock leg in stock-option orders,[23] and the SPIKES Combination hedges one or more SPIKES option series.[24] Finally, as discussed above, MIAX has represented that it has the system capacity to accommodate the trading of SPIKES Combo Orders as well as surveillance procedures to monitor compliance with its rules relating to delta neutral transactions.[25]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–MIAX–2019–37) is approved.

[20] 15 U.S.C. 78f(b)(5).

[21] *See* proposed MIAX Rule 518(a)(4)(i).

[22] *See* note 8, *supra.*

[23] *See* Notice, 84 FR at 43214.

[24] *See* proposed MIAX Rule 518, Interpretation and Policy .07(a)(3).

[25] *See id.* at 43215.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21879 Filed 10–7–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87179; File No. SR–NASDAQ–2019–075]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Further Delay Implementation of the Early Order Imbalance Indicator Functionality

October 1, 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 17, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay implementation of the Early Order Imbalance Indicator functionality until Q4 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 27, 2019, the Exchange filed a proposed rule change to establish the Early Order Imbalance Indicator (''EOII''), which contains a subset of the information comprising the Net Order Imbalance Indicator (''NOII'') that the Exchange will disseminate ten minutes prior to the market close and five minutes prior to the cutoff time for entering Market on Close and certain Limit on Close Orders into the Nasdaq Closing Cross.[3] The proposed rule change indicated that the Exchange would implement EOII in Q2 2019.[4] The Exchange subsequently delayed the implementation of EOII functionality until Q3 2019.[5] The Exchange now proposes to further delay the implementation of EOII functionality until Q4 2019. The Exchange will issue an Equity Trader Alert notifying participants prior to implementing the functionality. The Exchange proposes this delay to allow the EOII to become effective at the same time as a pending change to enhance the closing process for the Exchange.[6] The delay will also afford additional time that Exchange participants have requested to prepare for the onset of EOII.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by allowing the Exchange additional time to implement the EOII in conjunction with a related enhancement to the Closing Cross process. The delay would also afford participants the additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–85292 (Mar. 12, 2019), 84 FR 9848 (Mar. 18, 2019) (SR–NASDAQ–2019–010).

[4] *See id.* at 9850.

[5] *See* Securities Exchange Act Release No. 34–85745 (Apr. 29, 2019), 84 FR 19135 (May 3, 2019) (SR–NASDAQ–2019–032).

[6] *See* Securities Exchange Act Release No. 34–86642 (Aug. 13, 2019) (SR–NASDAQ–2019–064).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

time they have requested to prepare for the onset of EOII.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the implementation of the EOII functionality does not impose an undue burden on competition. Delaying EOII will simply allow the Exchange additional time to implement the EOII in conjunction with a related enhancement to the Closing Cross process. The delay will also afford participants the additional time they have requested to prepare for the onset of EOII.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can provide notice of the implementation delay as soon as possible. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–075 and should be submitted on or before October 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21950 Filed 10–7–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the pre-filing requirement. The Commission hereby waives that requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87200; File No. SR–CboeEDGX–2019–012]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Retail Priority

October 2, 2019

I. Introduction

On March 18, 2019, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') 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 introduce order book priority for equity orders submitted on behalf of retail investors. The proposed rule change was published for comment in the **Federal Register** on April 5, 2019.[3] The Commission received five comment letters from four commenters on the proposed rule change.[4] On May 16,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85482 (April 2, 2019), 84 FR 13729 (''Notice'').

[4] *See* letters to Vanessa Countryman, Acting Secretary, Commission, from Sean Paylor, Trader,

2019, the Commission extended the time period within which to approve, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 4, 2019.[5] On June 18, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On July 2, 2019, the Commission published Amendment No. 1 for notice and comment and instituted proceedings to under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On August 19, 2019 the Exchange submitted a response to comments.[9] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

EDGX proposes to introduce order book priority for Retail Priority Orders. In addition, EDGX proposes to require that Retail Priority Orders always be designated as such on the EDGX Book Feed.[10]

A. Background

EDGX operates based on price/display/time priority, similar to many other equities and options exchanges.[11] Under this framework, a better priced order maintains priority over an order at a worse price. At a particular price, the first Displayed[12] order resting on the EDGX Book[13] at a particular price has priority over the next order and so on based on the time of order entry. Non-Displayed[14] orders at that price are further categorized into a number of priority bands, with orders within each priority band prioritized again based on the time of order entry.

Under EDGX rules, a ''Retail Order'' is defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03[15] that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[16] A ''Retail Member Organization'' (''RMO'') is a Member (or a division thereof) that has been approved by the Exchange under EDGX Rule 11.21 to submit Retail Orders. EDGX Rule 11.21(b) describes the qualification and application process for becoming a Retail Member Organization; generally, any member may qualify as a Retail Member Organization if it conducts a retail business or routes retail orders on behalf of another broker-dealer.

B. Retail Order Priority

The Exchange proposes to amend EDGX Rule 11.9 to introduce order book priority benefits exclusively to Retail Orders that are entered on behalf of retail investors that enter a limited number of equity orders each trading day. Such orders are being defined by the Exchange as a ''Retail Priority Order.''[17] To qualify as a Retail Priority Order, the order must be a Retail Order, as defined in EDGX Rule 11.21(a)(2), that is entered on behalf of a person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s).[18] All orders entered on behalf of a retail customer would be counted to determine whether a customer's Retail Orders could be identified as Retail Priority Orders. This would therefore include both orders routed to other exchanges and orders that are not entered as Retail Orders (*e.g.,* because the price of such orders is modified by a broker-dealer algorithm).[19]

Pursuant to the proposal, RMOs that enter Retail Priority Orders would be required to have reasonable policies and procedures in place to ensure that such orders are appropriately represented on

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AJO, L.P., dated April 25, 2019 and September 16, 2019 (''AJO Letter 1'' and ''AJO Letter 2'', respectively); Joseph Saluzzi and Sal Arnuk, Partners, Themis Trading LLC, dated May 8, 2019 (''Themis Letter''); T. Sean Bennett, Principal Associate General Counsel, Nasdaq, dated May 9, 2019 (''Nasdaq Letter''); letter to Eduardo A. Aleman, Deputy Secretary, Commission from Stephen John Berger, Global Heady of Government & Regulatory Policy, Citadel Securities, dated April 26, 2019 (''Citadel Letter''). All comments received by the Commission on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboeedgx-2019-012/srcboeedgx2019012.htm.*

[5] *See* Securities Exchange Act Release No. 85879, 84 FR 23591 (May 16, 2019).

[6] Amendment No. 1 modified the proposed rule change by: (1) Adding a proposed definition of ''Retail Priority Order''; (2) applying the proposed enhanced priority to ''Retail Priority Orders'' instead of ''Retail Orders''; (3) imposing certain requirements on Retail Member Organizations that enter ''Retail Priority Orders''; (4) removing the proposed requirement that ''Retail Orders'' must be identified as such on the EDGX Book Feed; and (5) requiring that all ''Retail Priority Orders'' be identified as such on the EDGX Book Feed. To promote transparency of its proposed amendment, when EDGX filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its website and placed in the public comment file for SR–CboeEDGX–2019–012 (available at *https://www.sec.gov/comments/sr-cboeedgx-2019-012/srcboeedgx2019012.htm*).

[7] 15 U.S.C. 78s(b)(s)(B).

[8] *See* Securities Exchange Act Release No. 86280 (July 2, 2019), 84 FR 32808 (July 9, 2019) (''Notice of Amendment No. 1''). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 32815 (citing 15 U.S.C. 78f(b)(5)).

[9] *See* Letter to Vanessa Countryman, Secretary, Commission, from Adrian Griffiths, Assistant General Counsel, EDGX, dated August 19, 2019 (''EDGX Response Letter'').

[10] *See* EDGX Rule 13.8.

[11] *See* EDGX Rule 11.9.

[12] ''Displayed'' is an instruction the User may attach to an order stating that the order is to be displayed by the System on the EDGX Book. *See* EDGX Rule 11.6(e)(1).

[13] ''EDGX Book'' means the System's electronic file of orders. *See* EDGX Rule 1.5(d).

[14] ''Non-Displayed'' is an instruction the User may attach to an order stating that the order is not to be displayed by the System on the EDGX Book. *See* EDGX Rule 11.6(e)(2).

[15] FINRA Rule 5320.03 clarifies that an Retail Member Organization may enter Retail Orders on a riskless principal basis, provided that (i) the entry of such riskless principal orders meet the requirements of FINRA Rule 5320.03, including that the Retail Member Organization maintains supervisory systems to reconstruct, in a time sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the Retail Member Organization submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

[16] Retail Member Organizations will only be able to designate their orders as Retail Orders on either an order-by-order basis using FIX ports or by designating certain of their FIX ports at the Exchange as ''Retail Order Ports.'' Unless otherwise instructed by the Retail Member Organization, a Retail Order will be identified as Retail when routed to an away Trading Center. *See* EDGX Rule 11.21(d).

[17] *See* proposed EDGX Rule 11.9, Interpretations and Policies .01.

[18] *Id.* The Exchange states that 390 orders per day represents one order entered each minute during regular trading hours—*i.e.,* from 9:30 a.m. ET to 4:00 p.m. ET. *See supra* note 8, Notice of Amendment No. 1 at 32809.

[19] The Exchange also addresses how to count parent/child orders and cancel/replace orders when determining whether the 390 order per day threshold has been exceeded. As proposed, parent/child orders would be counted as a single order—*i.e.,* a ''parent'' order that is broken into multiple ''child'' orders by a broker or dealer, or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer, would count as one order even if the ''child'' orders are routed across multiple exchanges. In addition, with one exception for parent/child orders, any order that cancels and replaces an existing order would count as a separate order. An order that cancels and replaces any ''child'' order resulting from a ''parent'' order that is broken into multiple ''child'' orders, would not count as a new order. *See supra* note 8 at 32809–10.

the Exchange.[20] Such policies and procedures should provide for a review of retail customers' activity on at least a quarterly basis.[21] Retail Orders for any retail customer that had an average of more than 390 orders per day during any month of a calendar quarter would not be eligible to be entered as Retail Priority Orders for the next calendar quarter.[22] RMOs would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter.[23] While RMOs would only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a retail customer for which orders are being represented as Retail Priority Orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the RMO, and the RMO would be required to change the manner in which it is representing the retail customer's orders within five business days.[24] The Exchange notes that the proposed provisions relating to the obligations of RMOs are similar to the obligations applicable to the Priority Customer designation in the options industry.[25]

As described more fully in Amendment No. 1, that portion of a Retail Order with a Displayed instruction would be given allocation priority ahead of all other available interest on the EDGX Book.[26] This would be true of both orders executed pursuant to the regular priority bands described in EDGX Rule 11.9(a)(2)(A), and orders priced at the midpoint of the NBBO pursuant to EDGX Rule 11.9(a)(2)(B) where Retail Priority Orders subject to Display-Price Sliding would have priority ahead of limit orders entered with such an instruction as well as any other orders resting at the midpoint of the NBBO. In addition, since Reserve Orders contain a Displayed instruction but include both Displayed and Non-Displayed shares, the Reserve Quantity of Retail Priority Orders would be given priority ahead of the Reserve Quantity of other limit orders on the EDGX Book. Retail Priority Orders that are not willing to be displayed, or are only willing to be displayed at a less aggressive price than the execution price, would not receive any special priority. This priority for Retail Orders would be in place during all trading sessions and would be available to orders entered for participation in the Exchange's opening process and the re-opening process following a halt.[27]

C. Retail Order Attribution

Currently, RMOs that submit Retail Orders to the Exchange have the option of identifying Retail Orders as such on the EDGX Book Feed.[28] In the instant proposal, EDGX is requiring that Retail Priority Orders always be designated as such on the EDGX Book Feed.[29] Retail Orders that are not designated as Retail Priority Orders could continue to be attributed or not, at the discretion of the RMO.

III. Comment Summary

The Commission received five comment letters from four commenters on the proposed rule change.[30] All four commenters express concerns about the proposed rule change, as initially proposed. Following the publication of Amendment No. 1, the one of the four commenters submitted another comment letter that expresses continuing concerns about the proposed rule change, as amended.

Two commenters expressed concerns about the Exchange's initial definition of ''Retail Order,'' both noting that the definition does not adequately distinguish retail investors' orders from active professional traders' orders, potentially resulting in the granting of queue priority to professional traders.[31] One commenter stated that this would impair market quality, undermine the intended benefits for bona fide retail investors, adversely affect institutional investor fill rates, and impair the provision of displayed liquidity.[32] This commenter also suggested that active professional orders could more easily implement spread capture models by simply trading back-and-forth at the top of the queue.[33] This commenter further suggested that the Exchange should amend the definition of ''Retail Order'' and noted that the options markets use a definition of ''professional customer'' to distinguish them from retail customers.[34] The other commenter expressed concern that the Exchange has not addressed issues with enforcing the Retail Order definition, by, among other things, failing to adequately consider investor protection issues raised by the proposed rule change.[35] This commenter stated that the Exchange does not provide any detail on how it would protect investors from the misuse of retail priority and believes that the Exchange must provide more detail on how it will protect investors.[36]

One commenter stated that the initial rule proposal is ''the quintessential example of customer discrimination.'' [37] This commenter noted that the initial rule proposal is purportedly designed with ordinary investors in mind, but the Retail Order designation can only be utilized by a minority of ordinary investors, noting that pension funds and institutional managers trading on behalf of ''ordinary investors'' would not receive the benefit of order priority.[38] This commenter maintained that the proposed order type discriminates against a significant portion of ordinary investors as initially proposed and even as amended.[39]

Three commenters expressed concerns relating to the requirement, as set forth in the initial proposal, that Retail Orders will be designated as such on the EDGX Book Feed.[40] Two of these commenters stated that only those market participants who purchase the appropriate EDGX proprietary data feeds will have access to this information, and identifying Retail Orders will allow these market participants to identify institutional orders.[41] One commenter suggested that this places these market participants at an ''informational advantage over others.'' [42] Another commenter stated that such order information leakage will result in increased adverse selection for institutional investors and also believes that the unique data will make the relevant EDGX data feed more valuable and likely encourages consumers of those data feeds to continue purchasing these data feeds.[43] One commenter noted that institutional investors have no ability to opt out, unlike Retail Member Organizations that could

[20] *See* proposed EDGX Rule 11.9, Interpretations and Policies .02.

[21] *Id.*

[22] *See* proposed EDGX Rule 11.9, Interpretations and Policies .02(a).

[23] *Id.*

[24] *See* proposed EDGX Rule 11.9, Interpretations and Policies .02(b).

[25] *See* Notice of Amendment No. 1, *supra* note 8, at 32810.

[26] *Id.*

[27] *Id.*

[28] *See* EDGX Rule 11.21(f).

[29] *See* proposed EDGX Rule 11.21(f).

[30] *See supra* note 4.

[31] *See* Citadel Letter, *supra* note 4, at 1–2; Nasdaq Letter, *supra* note 4, at 1.

[32] *See* Citadel Letter, *supra* note 4, at 1–2.

[33] *See* Citadel Letter, *supra* note 4, at 2.

[34] *See* Citadel Letter, *supra* note 4, at 2.

[35] *See* Nasdaq Letter, *supra* note 4, at 1.

[36] *See* Nasdaq Letter, *supra* note 4, at 2.

[37] *See* AJO Letter 1, *supra* note 4, at 2–3.

[38] *See* AJO Letter 1, *supra* note 4, at 1; *see also* AJO Letter 2, supra note 4, at 2.

[39] *See* AJO Letter 1, *supra* note 4, at 4; *see also* AJO Letter 2, supra note 4, at 2, 4.

[40] *See* Nasdaq Letter, *supra* note 4, at 2–3; AJO Letter 1, *supra* note 4 at 2; Themis Letter, *supra* note 4 at 2.

[41] *See* AJO Letter 1, *supra* note 4, at 2; Themis Letter, *supra* note 4, at 1–2.

[42] *See* AJO Letter 1, *supra* note 4, at 2.

[43] *See* Themis Letter, *supra* note 4, at 2.

choose to submit orders that would qualify as Retail Orders if so designated, but are submitted without applying such designation.[44]

In its response letter, EDGX states that the proposal, as modified by Amendment No. 1, limits retail priority to only a subset of Retail Orders (*i.e.,* Retail Priority Orders) and therefore renders the information leakage question ''moot'' because the RMO would retain the choice of whether or not to attribute the order.[45] EDGX also notes that because only a subset of Retail Orders would be required to be attributed on the EDGX Book Feed, market participants would not be able to infer that any non-attributable order is an institutional order.[46]

EDGX responds to the concern raised by a commenter regarding the possible abuse of retail order priority by noting that the Exchange has limited retail priority to orders entered on behalf of investors that enter only a limited number of equity order each trading day, and asserting that the Exchange has an effective regulatory program to address member compliance with the retail priority order requirements.[47] EDGX also states that its Regulatory Division intends to implement enhancements to its current regulatory program designed to oversee RMO compliance with the retail priority rules to ensure that orders entered with a priority attribute are appropriately marked.[48]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[49] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[50] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the Exchange's proposal represents a reasonable effort to enhance the ability of bona fide retail trading interest to compete for executions with orders entered by other market participants that may be better equipped to optimize their place in the intermarket queue.[51] Under the proposal, bona fide retail orders will be in a position to compete for executions as long as they are qualified as such and attributed as such, which should lead to increased or more immediate execution opportunities on the Exchange for resting Retail Priority Orders. Furthermore, in order to qualify as a Retail Priority Order, the Exchange is requiring RMOs that enter Retail Priority Orders to have reasonable policies and procedures in place to ensure that such order are appropriately represented on the Exchange.[52] RMOs also must conduct a quarterly review of retail customers' activity and make any appropriate changes to the way in which the RMO is representing orders within five business days after the end of each calendar quarter. In addition, if the Exchange identifies a retail customer whose orders are being represented by an RMO that exceed 390 order per day during a month, the Exchange will notify the RMO and the RMO will be required to change the manner in which it is representing the retail customer's orders within five business days. The Commission also notes that the Exchange's Regulatory Division intends to implement enhancements to its current regulatory program designed to oversee RMO compliance with the retail priority rules to ensure that orders entered with a priority attribute are appropriate marked.[53]

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act[54] 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,[55] that the proposed rule change, as modified by Amendment No. 1 (SR–CboeEDGX–2019–012) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21881 Filed 10–7–19; 8:45 am]

BILLING CODE 8011–01–P

[44] *See* AJO Letter 1, *supra* note 4, at 3.

[45] *See* EDGX Response Letter, *supra* note 9 at 2. One commenter maintained that there is still ''information leakage'' which will permit institutional orders to be identified after the Exchange amended the original proposal to remove the requirement that all retail orders be attributed. *See* AJO Letter 2, *supra* note 4, at 2.

[46] *Id.*

[47] *See* EDGX Response Letter, *supra* note 9 at 3.

[48] *Id.*

[49] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f(b)(5).

[51] Under existing EDGX Rules, to qualify as a RMO, Members must submit to the Exchange, among other things, an attestation that substantially all orders submitted as Retail Orders will qualify as such, and must have written policies and procedures that are reasonably designed to ensure that the Member will only designate orders as Retail Order if all the requirements of a Retail Order are met. In addition, if the Member represents Retail Orders from another broker-dealer customer, that Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. Such Members also must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. *See generally* EDGX Rule 11.21(b).

[52] *See* proposed EDGX Rule 11.9, Interpretations and Policies .02.

[53] *Id.*

[54] 15 U.S.C. 78f(b)(5).

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16056 and #16057; MISSOURI Disaster Number MO–00099]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Missouri

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of MISSOURI (FEMA–4451–DR), dated 07/29/2019.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/29/2019 through 07/05/2019.

DATES: Issued on 09/30/2019.

Physical Loan Application Deadline Date: 09/27/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2020.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Missouri, dated 07/29/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Benton, Boone, Callaway, Clay, Cooper, Dunklin, Gasconade, Howard, Lafayette, Lincoln, Pulaski, Saint Charles, Saint Clair, Saint Louis City, Scott.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–21923 Filed 10–7–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15927 and #15928; NEBRASKA Disaster Number NE–00074]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA—4420—DR), dated 04/05/2019.

Incident: Severe Winter Storm, Straight-line Winds, and Flooding.

Incident Period: 03/09/2019 through 07/14/2019.

DATES: Issued on 09/30/2019.

Physical Loan Application Deadline Date: 06/04/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2020.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of NEBRASKA, dated 04/05/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Hayes.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–21922 Filed 10–7–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16093 and #16094; LOUISIANA Disaster Number LA–00094]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–4458–DR), dated 08/27/2019.

Incident: Hurricane Barry.

Incident Period: 07/10/2019 through 07/15/2019.

DATES: Issued on 09/30/2019.

Physical Loan Application Deadline Date: 10/28/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/27/2020.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of LOUISIANA, dated 08/27/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Parishes: Lafayette.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–21920 Filed 10–7–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice:10923]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Gerhard Richter: Painting After All'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Gerhard Richter: Painting After All,'' 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 Met Breuer, New York, New York, from on or about March 2, 2020, until on or about July 5, 2020, at the Museum of Contemporary Art, Los Angeles, California, from on or about August 14, 2020, until on or about January 19, 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: 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. 2019–21859 Filed 10–7–19; 8:45 am]

BILLING CODE 4710–05–P

STATE JUSTICE INSTITUTE

Grant Guideline, Notice

AGENCY: State Justice Institute.

ACTION: Grant Guideline for FY 2020.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2020 State Justice Institute grants.

DATES: October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *jonathan.mattiello@sji.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984 (42 U.S.C. 10701, *et seq.*), SJI is authorized to award grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

The following Grant Guideline is adopted by the State Justice Institute for FY 2020.

Table of Contents

I. The Mission of the State Justice Institute

SJI was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the state courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations which support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts. SJI is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a state court administrator; and four members of the public, no more than two of the same political party.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the state courts;

B. Provide for the preparation, publication, and dissemination of information regarding state judicial systems;

C. Participate in joint projects with federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;

E. Encourage and assist in furthering judicial education; and;

F. Encourage, assist, and serve in a consulting capacity to state and local courts in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).*

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. SJI may also make awards to state or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* SJI may enter into inter-agency agreements with federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

SJI is prohibited from awarding grants to federal, tribal, and international courts.

III. Scope of the Program

SJI is offering six types of grants in FY 2020: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiatives Grants (SIG) Program, and the Education Support Program (ESP).

The SJI Board of Directors has established Priority Investment Areas for grant funding. SJI will allocate significant financial resources through grant-making for these Priority Investment Areas (in no ranking order):

- Opioids and the State Court Response—SJI is supporting a comprehensive strategy for responding to the challenges facing state courts in addressing the national opioid crisis. Projects that address this Priority Investment Area will inform the work of the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA) National Opioid Task Force.
- Human Trafficking and the State Courts—Through the Human Trafficking and the State Courts Collaborative, addressing the impact of federal and state human trafficking laws on the state courts, and the challenges faced by state courts in dealing with cases involving trafficking victims and their families.
- Guardianship, Conservatorship, and Elder Issues—Assisting the state courts in improving their oversight responsibilities through electronic

reporting, visitor programs, and training.

• Juvenile Justice Reform—innovative projects that have no other existing or potential funding sources (federal, state, or private) that will advance best practices in handling dependency and delinquency cases; promote effective court oversight of juveniles in the justice system; address the impact of trauma on juvenile behavior; assist the courts in identification of appropriate provision of services for juveniles; and address juvenile re-entry.

• Reengineering to Improve Court Operations—Assisting courts with the process of reengineering, regionalization or centralization of services, structural changes, and improving performance. This includes the innovative use of remote technology to improve the business operations of the courts, and provide for the transaction of court hearings without an appearance in a physical courtroom.

• Fines, Fees, and Bail Practices—Assisting courts in taking a leadership role in reviewing fines, fees, and bail practices to ensure processes are fair and access to justice is assured; implementing alternative forms of sanction; developing processes for indigency review; and transparency, governance, and structural reforms that promote access to justice, accountability, and oversight. Projects that address this Priority Investment Area will inform the work of the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA) National Task Force on Fines, Fees, and Bail Practices.

• Family and Civil Justice Reform—Americans deserve a civil legal process that fairly and promptly resolves disputes for everyone. Runaway costs, delays, and complexity are denying people and businesses the justice they seek. SJI is promoting court-based solutions to address increases in self-represented litigants, including domestic relations cases which are overwhelming court dockets. Specific focus is on making courts more user-friendly to individuals, families, and businesses, and implementing the recommendations of the Family Justice Initiative and Civil Justice Initiative.

• Self-Represented Litigation—promoting court-based solutions to address increase in self-represented litigants; specifically making courts more user-friendly by simplifying court forms, providing one-on-one assistance, developing guides, handbooks, and instructions on how to proceed, developing court-based self-help centers, and using internet technologies to increase access.

• Language Access and the State Courts—improving language access in the state courts through remote interpretation (outside the courtroom), interpreter certification, and courtroom services (plain language forms, websites, etc.).

• Emergency Preparedness and Cybersecurity—State courts must be prepared for both man-made and natural disasters, pandemics, and other threats. In addition, the increase in cyberattacks on court operations is impacting the ability to provide access to the courts. SJI is interested in supporting projects that address these areas, including innovative approaches to ensuring courts are prepared to respond to disasters and attacks on electronic systems. Beyond physical security of courthouses, SJI will assist the state courts in preparing for, and responding to, the increase in natural disasters (such as hurricanes, earthquakes, and wildfires), and man-made disasters including denial of service and ransomware attacks on court case management systems, websites, and other critical information technology infrastructure.

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in state courts locally or nationwide. Project Grants may ordinarily not exceed $300,000. Examples of expenses not covered by Project Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. Funding from other federal departments or agencies may not be used for cash match. If questions arise, applicants are strongly encouraged to consult SJI.

As set forth in Section I., SJI is authorized to fund projects addressing a broad range of program areas. Funding will not be made available for the ordinary, routine operations of court systems.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide state or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $50,000. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 12 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a *total* match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $50,000 TA grant must provide a $25,000 match, of which up to $20,000 can be in-kind and not less than $5,000 must be cash. Funding from other federal departments and agencies may not be used for cash match. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed $30,000. Examples of expenses not covered by CAT Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $30,000 CAT grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less

than $3,000 must be cash. Funding from other federal departments and agencies may not be used for cash match. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow SJI and federal, state, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar-for-dollar. Partner Grants are initiated and coordinated by SJI and its financial partner. More information on Partner Grants can be found in section IV.D.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program provides SJI with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services, and is handled at the discretion of the SJI Board of Directors and staff outside the normal grant application process (*i.e.,* SJI will initiate the project).

F. Education Support Program (ESP) for Judges and Court Managers

The Education Support Program (ESP) is intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state, or to enroll in online, educational and training programs sponsored by national and state providers that they could not otherwise attend or take online because of limited state, local, and personal budgets. The program only covers the cost of tuition up to a maximum of $1,000 per course. More information on the ESP program can be found in section IV.E.

IV. Grant Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See *www.sji.gov/forms* for Project Grant application forms.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. It denotes further that, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities (Form E)

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.,* to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives.

The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

b. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant

reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

c. Tasks, Methods and Evaluations

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; the type of assistance determined; how suitable providers would be selected and briefed; and how reports would be reviewed.

(2) *Evaluation.* Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan should be appropriate to the type of project proposed.

d. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that SJI is unlikely to approve a limited extension of the grant period without strong justification. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

e. Products

The program narrative in the application should contain a description of the product(s) to be developed (*e.g.,* training curricula and materials, websites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to SJI. The budget should include the cost of producing and disseminating the product to the state chief justice, state court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Discussion of this dissemination process should occur between the grantee and SJI prior to the final selection of the dissemination process to be used.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

Applicants proposing to develop web-based products should provide for sending a notice and description of the document to the appropriate audiences to alert them to the availability of the website or electronic product (*i.e.,* a written report with a reference to the website).

Three (3) copies of all project products should be submitted to SJI, along with an electronic version in HTML or PDF format. Discussions of final product dissemination should be conducted with SJI prior to the end of the grant period.

(2) *Types of Products.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use by others and again by the original participants in the course of their duties.

(3) *SJI Review.* Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in website or multimedia format, applicants must provide for SJI review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of SJI (see section VI.A.11.f.).

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from SJI and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Grant Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a website or other multimedia product, unless SJI approves another placement. The SJI logo can be downloaded from SJI's website: *www.sji.gov.*

f. Applicant Status

An applicant that is not a state or local court and has not received a grant from SJI within the past three years should indicate whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or a national non-profit organization for the education and training of state court judges and support personnel (see section II). If the applicant is a non-judicial unit of federal, state, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

g. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

h. Organizational Capacity

Applicants that have not received a grant from SJI within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, SJI will require the organization to complete a financial capability questionnaire, which must be signed by a certified public accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

i. Statement of Lobbying Activities

Non-governmental applicants must submit SJI's Disclosure of Lobbying Activities Form E, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

j. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. Letters of general support for a project are also encouraged.

4. Budget Narrative

In addition to Project Grant applications, the following section also applies to Technical Assistance and Curriculum Adaptation and Training grant applications.

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as in-kind match.

b. Fringe Benefit Computation

For non-governmental entities, the applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.,* the number of days multiplied by the daily consultant

rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the federal government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited.

h. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine mailing costs. The bases for all postage estimates should be included in the budget narrative.

i. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

j. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs, *i.e.* salaries plus fringe benefits (see section VII.H.3.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.H.3. If the applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

5. Submission Requirements

a. Every applicant must submit an original and one copy, by mail, of the application package consisting of Form A; Form B, if the application is from a state or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of state or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. However, applicants are encouraged to review the grant deadlines available on the SJI website. Receipt of each application will be acknowledged by letter or email.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit an original and one copy, by mail, of a detailed letter describing the proposed project, as well as a Form A—State Justice Institute Application; Form B—Certificate of State Approval from the State Supreme Court, or its designated agency; and Form C—Project Budget in Tabular Format (see *www.sji.gov/forms*).

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* The applicant must explain the critical need facing the applicant, and the proposed technical assistance that will enable the applicant meet this critical need. The applicant must also explain why state or local resources are not sufficient to fully support the costs of the project. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

b. *Project Description.* The applicant must describe how the proposed project addressed one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The applicant must describe the tasks the consultant will perform, and how would they be accomplished. In addition, the applicant must identify which organization or individual will be hired to provide the assistance, and how the consultant was selected. If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the

schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and SJI upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must follow the same guidelines provided under Section IV.A. A completed Form C—Project Budget, Tabular Format and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.,* the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by SJI, and that no consultant will be paid more than $1,100 per day from SJI funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the SJI.

Recipients of TA Grants must maintain appropriate documentation to support expenditures.

4. Submission Requirements

Letters of application should be submitted according to the grant deadlines provided on the SJI website.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Letters of general support for the project are also encouraged. Support letters may be submitted under separate cover; however, they should be received by the same date as the application.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

Applicants must submit an original and one copy, by mail, of a detailed letter as well as a Form A—State Justice Institute Application; Form B—Certificate of State Approval; and Form C—Project Budget, Tabular Format (see *www.sji.gov/forms*).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information.

a. For adaptation of a curriculum:

(1) *Project Description.* The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not. Due to the high costs of travel to attend training events, the innovative use of distance learning is highly encouraged.

The applicant must provide the title of the curriculum that will be adapted, and identify the entity that originally developed the curriculum. The applicant must also address the following questions: Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from a single local jurisdiction, from across the state, from a multi-state region, from across the nation)?

(2) *Need for Funding.* The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should explain why state or local resources are unable to fully support the modification and presentation of the model curriculum. The applicant should also describe the potential for replicating or integrating the adapted curriculum in the future using state or local funds, once it has been successfully adapted and tested. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(3) *Likelihood of Implementation.* The applicant should provide the proposed timeline, including the project start and end dates, the date(s) the judicial branch education program will be presented, and the process that will be used to modify and present the program. The applicant should also identify who will serve as faculty, and how they were selected, in addition to the measures taken to facilitate subsequent presentations of the program. Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) *Need for Funding.* The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant

reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should describe the court reform or initiative prompting the need for training. The applicant should also discuss how the proposed training will help the applicant implement planned changes at the court, and why state or local resources are not sufficient to fully support the costs of the required training. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(2) *Project Description.* The applicant must identify the tasks the trainer(s) will be expected to perform, which organization or individual will be hired, and, if in-house personnel are not the trainers, how the trainer will be selected. If a trainer has not yet been identified, the applicant must describe the procedures and criteria that will be used to select the trainer. In addition, the applicant should address the following questions: What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost.

(3) *Likelihood of Implementation.* The applicant should explain what steps have been or will be taken to coordinate the implementation of the training. For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the reform and initiate the training proposed, how will the applicant secure their involvement in the development and implementation of the training?

3. Budget and Matching State Contribution

Applicants must also follow the same guidelines provided under Section IV.A. Applicants should attach a copy of budget Form C and a budget narrative that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. Letters of support for the project are also encouraged. Applicants are encouraged to call SJI to discuss concerns about timing of submissions.

D. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting state and local courts. SJI may solicit brief proposals from potential grantees to fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant.

E. Education Support Program (ESP)

The Education Support Program (ESP) supports full-time state court judges and court managers to attend courses that enhance the knowledge, skills, and abilities which they could not otherwise attend because of limited, state, local, or personal budgets. The National Judicial College (NJC) and the National Center for State Courts/Institute for Court Management (ICM) will administer the ESP program separately, in partnership and with funding from SJI.

a. *Covered Costs.* The ESP program only covers the costs of tuition up to a maximum of $1,000 per award. Awards will be made for the exact amount requested for tuition. Funds to play tuition in excess of $1,000, and other costs of participating in a course such as travel, transportation, meals, materials, and transportation to and from airports (including rental cars) at the site of the educational program, must be obtained from other sources or be borne by the ESP award recipient.

b. *Eligible Recipients.* Because of the limited amount of funding available, only full-time judges of state or local trial and appellate courts; full-time professional, state or local court personnel with management and supervisory responsibilities or on a professional management career track; and supervisory and management probation personnel in judicial branch probation offices are eligible for the program. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible. Applicants will be limited to one ESP award every other fiscal year (*i.e.,* if awarded an ESP in FY 2020, the applicant will remain ineligible until FY 2022), unless the course specifically assumes multi-year participation as part of a certificate program.

c. *Eligible Courses.* Awards are only for courses presented by the NJC and ICM in a U.S. jurisdiction to participants in the U.S. or U.S. Territories. These courses are designed to enhance the skills of new or experienced judges and court managers. Participation during annual or mid-year conferences or meetings of a state or national organization does not qualify for ESP purposes, even though the conference may include workshops or other training sessions.

d. How and When To Apply.

For NJC Courses: To seek an ESP to attend an NJC course, simply find the course you wish to attend on the NJC website: *www.judges.org/courses,* and click ''register.'' During the registration process, the website will ask whether you need a scholarship to attend. Simply follow the online instructions to request tuition assistance. If you have any questions about this process, you may contact NJC Scholarship Coordinator Brenda Pardini, at *pardini@judges.org* or 800–225–8343. The NJC reserves the right to apply additional selection criteria.

For ICM Courses: To seek an ESP to participate in the ICM Fellows Program, submit a completed application to ICM Education Program Manager Amy McDowell, at *amcdowell@ncsc.org.* If you have questions about this process, you may contact her at 757–259–1552 or via email. To seek an ESP to participate in an ICM course, find the course you wish to attend on the ICM website: *www.courses.ncscs.org,* and click ''register.'' During the registration process, the website will ask if you need

a scholarship to participate. Follow the online instructions to request tuition assistance. If you have any questions about this process, you may contact ICM Director of National Programs Margaret Allen, at *mallen@ncsc.org* or 757–259–1581. ICM reserves the right to apply additional selection criteria.

e. *Responsibilities of ESP Award Recipients.* Recipients are responsible for disseminating the information received from the course, when possible, to their court colleagues locally, and if possible, throughout the state. The NJC and ICM may impose additional requirements on recipients.

V. Application Review Procedures

A. Preliminary Inquiries

SJI staff will answer inquiries concerning application procedures.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. SJI will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for state courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and,

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, SJI will also consider whether the applicant is a state court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under SJI's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the federal courts or help state courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and,

e. The reasonableness of the proposed budget.

SJI also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to SJI in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and,

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

SJI will also consider factors such as the reasonableness of the amount requested; compliance with match requirements; diversity of subject matter, geographic diversity; the level of appropriations available to SJI in the current year; and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of SJI and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

C. Review and Approval Process

1. Project Grant Applications

SJI's Board of Directors will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Board will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

3. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend on negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned.

E. Notification of Board Decision

SJI will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except ESP applications), if requested, SJI will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit

resubmission of a proposal in a subsequent funding cycle.

F. Response to Notification of Approval

With the exception of those approved for ESP awards, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and SJI review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in other situations.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by SJI. The Board of Directors has approved additional policies governing the use of SJI grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of SJI grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.I. for the requirements of such audits).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with SJI-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of SJI project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of SJI-sponsored work, such fact shall be promptly and fully reported to SJI. Unless there is a prior agreement between the grantee and SJI on disposition of such items, SJI shall determine whether protection of the invention or discovery shall be sought.

7. Lobbying

a. Funds awarded to recipients by SJI shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by federal, state or local agencies, or to influence the passage or defeat of any legislation by federal, state or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than ESP award recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. In-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project or that portion of the grantee's federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of SJI, match may be incurred from the date of the Board of Directors' approval of an award. The amount and nature of required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.D.1.). Match should be expended at the same rate as SJI funding.

The Board of Directors looks favorably upon any unrequired match contributed

by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

Other federal department and agency funding may not be used for cash match.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of SJI funds must acknowledge prominently on all products developed with grant funds that support was received from the SJI. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available on SJI's website: *www.sji.gov/forms.*

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI–[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

(3) In addition to other required grant products and reports, recipients must provide a one page executive summary of the project. The summary should include a background on the project, the tasks undertaken, and the outcome. In addition, the summary should provide the performance metrics that were used during the project, and how performance will be measured in the future.

b. Charges for Grant-Related Products/ Recovery of Costs

(1) SJI's mission is to support improvements in the quality of justice and foster innovative, efficient solutions to common issues faced by all courts. SJI has recognized and established procedures for supporting research and development of grant products (*e.g.,* a report, curriculum, video, software, database, or website) through competitive grant awards based on merit review of proposed projects. To ensure that all grants benefit the entire court community, projects SJI considers worthy of support (in whole or in part), are required to be disseminated widely and available for public consumption. This includes open-source software and interfaces. Costs for development, production, and dissemination are allowable as direct costs to SJI.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain SJI's prior written approval of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI (see section VII.F.).

c. Copyrights

Except as otherwise provided in the terms and conditions of a SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.J.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Three (3) copies of each final product developed with grant funds to SJI, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required; and

(2) An electronic version of the product in HTML or PDF format to SJI.

f. SJI Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of SJI. Grantees shall submit a final draft of each written product to SJI for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit SJI review and incorporation of any appropriate changes required by SJI. Grantees must provide for timely reviews by the SJI of website or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of SJI-supported projects must be

originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of SJI funds other than ESP awards must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.G.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.J.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis backup files containing research and evaluation data collected under an SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council. The supreme court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.B.2.

16. Supplantation and Construction

To ensure that SJI funds are used to supplement and improve the operation of state courts, rather than to support basic court services, SJI funds shall not be used for the following purposes:

a. To supplant state or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures.

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the SJI-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to SJI one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any

evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply, unless specific arrangements are determined by the Partners.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, sub-grantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of SJI for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council.

b. The state supreme court or its designee shall receive all SJI funds awarded to such courts; be responsible for assuring proper administration of SJI funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The state supreme court or its designee should be familiar with, and periodically monitor, its sub-grantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The sub-grantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the state supreme court or its designee in summary form. Sub-grantee expenditures should be recorded on the books of the state supreme court or evidenced by report forms duly filed by the sub-grantee. Matching contributions provided by sub-grantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The state supreme court or its designee should ensure that each sub-grantee prepares an adequate budget as the basis for its award commitment. The state supreme court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The state supreme court or its designee will ensure that sub-grantees comply with the match requirements specified in this Grant Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The state supreme court or its designee is required to ensure that sub-grantees meet the necessary audit requirements set forth by SJI (see sections I. and VI.A.3. below).

(6) *Reporting Irregularities.* The state supreme court, its designees, and its sub-grantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-grantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a ''Total Project Cost'' basis. That is, total project costs, including SJI funds, state and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions should be applied at the same time as the obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the Board of Directors, but before the beginning of the grant, may be counted as match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/sub-grantee compliance with the requirements of this section (see subsection B.2. above).

E. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, sub-grants,

cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and sub-grant awards, applications, and required grantee/sub-grantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, sub-grant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and sub-grantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and sub-grantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/sub-grantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and sub-grantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to an SJI grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see subsection G.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to sub-grantees through a state, the sub-grantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/sub-grantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with prior written approval from SJI. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of SJI. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports (Form F) and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

Request for Reimbursement of Funds Grantees will receive funds on a reimbursable, U.S. Treasury ''check-issued'' or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Reimbursement (Form R) by SJI, payment will be issued directly to the grantee or its designated fiscal agent. The Form R, along with the instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's website: *www.sji.gov/forms.*

2. Financial Reporting

a. General Requirements. To obtain financial information concerning the use of funds, SJI requires that grantees/sub-grantees submit timely reports for review.

b. Due Dates and Contents. A Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report (Form F), along with instructions, are provided at *www.sji.gov/forms.* If a grantee requests substantial payments for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant reimbursement.

H. Allowability of Costs

1. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of SJI is required for costs considered necessary but which occur prior to the start date of the project period.

b. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of SJI is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. Consultants. The written prior approval of SJI is required when the rate of compensation to be paid a consultant

exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

d. Budget Revisions. Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

2. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the federal government. SJI funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

3. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a federal agency. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available.

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.,* accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

I. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a sub-grant from the state supreme court. The audit may be of the entire grantee or sub-grantee organization or of the specific project funded by the Institute. Audits conducted using generally accepted auditing standards in the United States will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a state or local agency authorized to audit government agencies.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

J. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection J.2. below), the following documents must be submitted to SJI by grantees:

a. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to SJI prior to the end of the 90-day close-out period.

b. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation. These reporting requirements apply at the conclusion of every grant.

2. Extension of Close-Out Period

Upon the written request of the grantee, SJI may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Grant Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of SJI:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.H.1.d.).

2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see subsections F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see subsection H. below).

11. A transfer of the grant to another recipient.

12. Pre-agreement costs (see section VII.I.2.a.).

13. The purchase of automated data processing equipment and software (see section VII.H.1.b.).

14. Consultant rates (see section VII.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.J.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/sub-grantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee/sub-grantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by SJI.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to SJI.

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Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2019–21951 Filed 10–7–19; 8:45 am]

BILLING CODE 6820–SC–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: 2010–1052]

Airport Investment Partnership Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of the record of decision for the participation of Airglades Airport, Hendry County, Clewiston, Florida in the Airport Investment Partnership Program.

SUMMARY: The Federal Aviation Administration (FAA) has approved the final application by Hendry County, Florida, for Airglades Airport to participate in the Airport Investment Partnership Program. Three exemptions were issued from certain provisions of Federal law. Congress established an Airport Privatization Pilot Program and authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to grant exemptions from certain Federal

statutory and regulatory requirements. The Airport Privatization Pilot Program is now called the Airport Investment Partnership Program in accordance with the FAA Reauthorization Act of 2018. The Application Procedures require the FAA to approve the final application to permit exemptions after review of all documents necessary to comply with laws and regulations within the FAA's jurisdiction.

DATES: The Record of Decision was signed on September 30, 2019. Hendry County will sell Airglades Airport to Airglades LLC in accordance with the purchase and sale agreement.

ADDRESSES: The Record of Decision is available for public review under Docket Number 2010–2052, on the internet at *http://www.regulations.gov,* on the FAA's website *www.faa.gov* or in person at the Docket Operations office between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except Federal holidays. The Docket Operations Office (800–647–5527) is located at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Director, Airport Compliance and Management Analysis, ACO–1, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–3085.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Title 49 of the U.S. Code 47134 establishes the Airport Investment Partnership Program and authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, per § 47134(b)(1) the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, (in the case of a non-primary airport, after the airport has consulted with at least 65 percent of the owners of aircraft based at that airport). If the exemption under § 47134(b)(1) is granted, the Administrator shall exempt the sponsor from the obligation to pay back a portion of Federal grants upon the sale or lease of an airport, or to return airport property deeded by the Federal Government upon transfer of the airport. If the exemption under § 47134(b)(1) is granted, the Administrator shall exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemptions under Airport Privatization Pilot Program (62 **Federal Register** (FR) 48693). On October 18, 2010, the FAA issued a letter accepting for review the Airglades Airport preliminary application (84 FR 4291, Docket Number 2010–1052). On August 8, 2019, Hendry County filed the final application for the privatization of Airglades Airport. The final application provides for the sale of Airglades Airport to Airglades LLC to operate the airport as a general aviation facility and to develop a Perishable Cargo Complex. The privatization plan includes constructing a 10,000-foot runway for a Perishable Cargo Complex.

On August 19, 2019, the Federal Aviation Administration published in the **Federal Register** a Notice of Receipt of Final Application of Airglades Airport (2IS), Hendry County, Clewiston, Florida: Commencement of 30-day public view and comment period (84 FR 42977). The Notice made known the availability of the final application for Airglades Airport for public view and comment. Comments were requested by September 18, 2019.

The FAA received 284 comments in response to the Notice. The FAA response to the comments is incorporated in the Record of Decision.

On September 30, 2019, the FAA signed the Record of Decision approving the participation of Airglades Airport in the Airport Investment Partnership Program.

Issued in Washington, DC, on October 3, 2019.

Lorraine M. Herson-Jones,

Manager, Office of Airport Compliance and Management Analysis.

[FR Doc. 2019–21948 Filed 10–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Solicitation of Nominations for Appointment to the Women in Aviation Advisory Board

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

ACTION: Solicitation of Nominations for Appointment to the Women in Aviation Advisory Board.

SUMMARY: The FAA is issuing this notice to solicit nominations for qualified candidates to serve on the Women in Aviation Advisory Board (the Board). The objective of the Board is to provide independent advice and recommendations to the FAA. Section 612, Supporting Women's Involvement in the Aviation Field, of the FAA Reauthorization Act of 2018, requires the FAA Administrator establish and facilitate a Women in Aviation Advisory Board to encourage women and girls to enter the field of aviation with the objective of promoting organizations and programs that are providing education, training, mentorship, outreach, and recruitment of women into the aviation industry.

DATES: Nomination package materials (see below) must be received no later than October 29, 2019 to be considered for the initial committee appointment. Nomination packages received after that date will be retained for consideration to fill future committee vacancies.

ADDRESSES: All nominations shall be emailed to Angela Anderson, the Designated Federal Officer, at *s612womenadvisoryboard@faa.gov* (subject line ''2019 Women in Aviation Advisory Board Nomination''). A return email confirmation will be sent upon receipt.

FOR FURTHER INFORMATION CONTACT: For questions about this process or general questions about the Board, please contact Angela Anderson at *s612womenadvisoryboard@faa.gov.*

SUPPLEMENTARY INFORMATION:

Description of Duties: The Board acts solely in an advisory capacity and does not exercise program management responsibilities. Any decisions directly affecting implementation of policy will remain with the FAA Administrator and the Secretary of Transportation.

The Board shall present a comprehensive plan for strategies the FAA Administrator can take, which include the following objectives:

a. Identifying industry trends that directly or indirectly encourage or discourage women from pursuing careers in aviation.

b. Coordinating the efforts of airline companies, nonprofit organizations, and aviation and engineering associations to facilitate support for women pursuing careers in aviation.

c. Creating opportunities to expand existing scholarship opportunities for women in the aviation industry.

d. Enhancing aviation training, mentorship, education, and outreach programs that are exclusive to women.

No later than 2 years after the date of the enactment of the Reauthorization Act of 2018, the Board shall submit a report outlining the comprehensive plan for strategies to the Administrator and the appropriate committees of Congress.

Membership: The membership will be fairly balanced in terms of points of view represented and the functions performed. The stakeholder groups to be represented on the Board will include:

a. Major airlines and aerospace companies.

b. Nonprofit organizations within the aviation industry.

c. Aviation business associations.

d. Engineering business associations.

e. United States Air Force Auxiliary, Civil Air Patrol.

f. Institutions of higher education and aviation trade schools.

All Board members serve at the pleasure of the Secretary of Transportation. Other membership criteria include:

a. Members shall be appointed for the duration of the existence of the Board.

b. Members will serve without government compensation or reimbursement.

c. Representative members must represent a particular interest in employment, education, experience, or affiliation with a specific aviation-related organization.

d. Members must attend at least three-quarters of all Board meetings (estimated two meetings annually).

Qualifications: Representative member candidates must be in good public standing and currently serve as a member of their organization's core senior leadership team. In some circumstances, membership will be granted to uniquely qualified individuals who do not meet this latter requirement.

Materials to Submit: Candidates are required to submit, in full, the following materials to be considered for Board membership. Failure to submit the required information may disqualify a candidate from the review process.

a. A short biography of the nominee, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, as well as contact information.

c. Up to three letters of recommendation may be submitted, but are not required. Each letter may be no longer than one page.

d. A one-page statement describing how the candidate will benefit the Board, taking into account the candidate's unique perspective that will advance the conversation. This statement must also identify a primary and secondary stakeholder group to which the candidate's expertise best aligns. Finally, candidates should state their previous experience on a Federal Advisory Committee, their level of knowledge in the above stakeholder groups, and the size of the constituency they represent or are able to reach.

Evaluations will be based on the materials submitted by the prospective candidates and will include consideration for membership balancing to ensure each of the above stakeholder groups has adequate representation.

Issued in Washington, DC, on September 30, 2019.

Angela Anderson,

Senior Advisor, Office of the Assistant Administrator for Human Resource Management, Federal Aviation Administration.

[FR Doc. 2019–21962 Filed 10–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the Federal-State Partnership for State of Good Repair Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO or notice).

SUMMARY: This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Federal-State Partnership for State of Good Repair Program (Partnership Program). This notice solicits applications for Partnership Program funds made available by the Consolidated Appropriations Act, 2019. The opportunity described in this notice is made available under Catalog of Federal Domestic Assistance (CFDA) number 20.326, ''Federal-State Partnership for State of Good Repair.''

DATES: Applications for funding under this solicitation are due no later than 5:00 p.m. EDT, December 9, 2019. FRA will not consider applications for funding or supplemental material in support of an application received after 5:00 p.m. EDT, on December 9, 2019 or incomplete applications for funding. See *Section D* of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov*. Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline.

FOR FURTHER INFORMATION CONTACT: For further project- or program-related information in this notice, please contact Mr. Bryan Rodda, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–203, Washington, DC 20590; email: *Bryan.Rodda@dot.gov;* phone: 202–493–0443. Grant application submission and processing questions should be addressed to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: 202–493–0303.

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded to recipients through a cooperative agreement. Definitions of key terms used throughout the NOFO are provided in *Section A(2).* These key terms are capitalized throughout the NOFO. There are several administrative and eligibility requirements described herein with which applicants must comply. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

Table of Contents

A. Program Description

1. Overview

The purpose of this notice is to solicit applications for grants for Capital Projects within the United States to repair, replace, or rehabilitate Qualified Railroad Assets to reduce the state of good repair backlog and improve Intercity Passenger Rail performance under the Partnership Program. The Partnership Program provides a Federal funding opportunity to leverage private, state, and local investments to significantly improve American rail infrastructure. The Partnership Program is authorized in Sections 11103 and 11302 of the Passenger Rail Reform and Investment Act of 2015 (Title XI of the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114–94 (2015)); codified at 49 U.S.C. 24911 and this NOFO is funded by the 2019 Appropriation.

The Department recognizes the importance of applying life cycle asset management principles throughout America's infrastructure. It is important for rail infrastructure owners and operators, as well as those who may apply on their behalf, to plan for the maintenance and replacement of assets and the associated costs. In light of recent fatal passenger rail accidents, the Department particularly recognizes the opportunity to enhance safety in both track and equipment through this grant program, and encourages the submission of proposed projects to grade-separate or otherwise improve safety at highway-rail grade crossings.

The Partnership Program is intended to benefit both the Northeast Corridor (''NEC'') and the large number of public or Amtrak-owned or controlled infrastructure, equipment, and facilities located in other areas of the country, including strengthening transportation options for rural American communities. Applicants should note that the Partnership Program has distinct eligibility requirements based on project location. In addition to the generally applicable requirements, applicants proposing NEC Projects should specifically review the NEC-specific requirements provided in *Section C(3)*(b), and the Qualified Railroad Asset information provided in *Section D(2)*(a)(vi) while applicants proposing Non-NEC Projects should review the Qualified Railroad Asset information provided in *Section D(2)*(a)(v).

2. Definitions of Key Terms

a. ''Benefit-Cost Analysis'' (or ''Cost-Benefit Analysis'') is a systematic, data-driven, and transparent analysis comparing monetized project benefits and costs, using a no-build baseline and properly discounted present values, including concise documentation of the assumptions and methodology used to produce the analysis, a description of the baseline, data sources used to project outcomes, values of key input parameters, basis of modeling (including spreadsheets, technical memos, etc.), and presentation of the calculations in sufficient detail and transparency to allow the analysis to be reproduced and sensitivity of results evaluated by FRA. Please refer to the Benefit-Cost Analysis (BCA) Guidance for Discretionary Grant Programs prior to preparing a BCA at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance.* In addition, please also refer to the BCA FAQs on FRA's website for rail-specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to Partnership Program applications.

b. ''Capital Project'' means a project primarily intended to replace, rehabilitate, or repair major infrastructure assets utilized for providing Intercity Passenger Rail service, including tunnels, bridges, and stations; or a project primarily intended to improve Intercity Passenger Rail performance, including reduced trip times, increased train frequencies, and higher operating speeds, consistent with 49 U.S.C. 24911(a)(2).

c. ''Commuter Rail Passenger Transportation'' means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations, consistent with 49 U.S.C. 24102(3).

d. ''Intercity Rail Passenger Transportation'' means rail passenger transportation, except Commuter Rail Passenger Transportation, consistent with 49 U.S.C. 24911(a)(3). In this notice, ''Intercity Passenger Rail'' is an equivalent term to ''Intercity Rail Passenger Transportation.''

e. ''Major Capital Project'' means a Capital Project with an estimated total project cost of $300 million or more.

f. ''NEC Project'' means a Capital Project where the Qualified Railroad Assets involved in the project are part of, or in primary use for, the Northeast Corridor (''NEC'').

g. ''Non-NEC Project'' means a Capital Project where the Qualified Railroad Assets involved in the project are not part of, or are not in primary use for, the Northeast Corridor (''NEC'').

h. ''Northeast Corridor'' (''NEC'') means the main rail line between Boston, Massachusetts, and the District of Columbia; the branch rail lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York; and facilities and services used to operate and maintain these lines, consistent with 49 U.S.C. 24911(a)(4).

i. A ''Qualified Railroad Asset,'' consistent with 49 U.S.C. 24911(a)(5), means infrastructure, equipment, or a facility that:

i. is owned or controlled by an eligible applicant;

ii. is contained in the planning document developed under 49 U.S.C. 24904 and for which a cost-allocation policy has been developed under 49 U.S.C. 24905(c), or is contained in an equivalent planning document and for which a similar cost-allocation policy has been developed; and

iii. was not in a State of Good Repair on the date of enactment of the Passenger Rail Reform and Investment Act of 2015 (December 4, 2015).

See *Section D(2)*(a), Project Narrative, for further details about the Qualified Railroad Asset requirements and application submission instructions related to Qualified Railroad Assets.[1]

j. ''State of Good Repair'' means a condition in which physical assets, both individually and as a system, are (A) performing at a level at least equal to that called for in their as-built or as-modified design specification during any period when the life cycle cost of maintaining the assets is lower than the cost of replacing them; and (B) sustained through regular maintenance and replacement programs, consistent with 49 U.S.C. 24102(12).

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is $396,000,000 after $4,000,000 is set aside for FRA award and project management oversight as provided in the 2019 Appropriation. Should additional Partnership Program funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO.

[1] For any project that includes purchasing intercity passenger rail equipment, applicants are encouraged to use a standardized approach to the procurement, such as the specifications developed by the Next Generation Corridor Equipment Pool Committee or a similarly uniform process.

2. Award Size

There are no predetermined minimum or maximum dollar thresholds for awards. FRA anticipates making multiple awards with the available funding. Given the limited amount of funding currently available, FRA may not be able to award grants to all eligible applications, nor even to all applications that meet or exceed the stated evaluation criteria (see *Section E,* Application Review Information). Applicants are encouraged to identify scalable elements such as project components that have operational independence. (See *Section C(3)*(c) for more information.)

FRA strongly encourages applicants to identify and include other state, local, public, or private funding or financing to support the proposed project in order to maximize competitiveness.

Applicants proposing a Major Capital Project are encouraged to identify and describe project phases or elements that could be candidates for subsequent Partnership Program funding, if such funding becomes available. Applications for a Major Capital Project that would seek future funds beyond fiscal year 2019 funding made available in this notice should indicate anticipated annual Federal funding requests from this program for the expected duration of the project. FRA may issue Letters of Intent to Partnership Program grantees proposing Major Capital Projects under 49 U.S.C. 24911(g); such Letters of Intent would serve to announce the FRA's intention to obligate an amount from future available budget authority toward a grantee's future project phases or elements. A Letter of Intent is not an obligation of the Federal government and is subject to the availability of appropriations for Partnership Program grants and subject to Federal laws in force or enacted after the date of the Letter of Intent.

3. Award Type

FRA will make awards for projects selected under this notice through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight under 2 CFR 200.24. The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/Details/L19057.*

4. Concurrent Applications

DOT and FRA may be concurrently soliciting applications for transportation infrastructure projects for several financial assistance programs. Applicants may submit applications requesting funding for a particular project to one or more of these programs. In the application for Partnership Program funding under this NOFO, applicants must indicate the other program(s) to which they submitted or plan to submit an application for funding the entire project or certain project components, as well as highlight new or revised information in the Partnership Program application that differs from the application(s) submitted for other Federal financial assistance programs.

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, project eligibility, and project component operational independence. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in *Section D* of this NOFO.

1. Eligible Applicants

The following entities are eligible applicants for all projects permitted under this notice:

(1) A state (including the District of Columbia);

(2) a group of states;

(3) an Interstate Compact;

(4) a public agency or publicly chartered authority established by one or more states; [2]

(5) a political subdivision of a state;

(6) Amtrak, acting on its own behalf or under a cooperative agreement with one or more states; or

(7) any combination of the entities described in (1) through (6).

Applications must identify a lead applicant. The lead applicant serves as the primary point of contact for the application, and if selected, as the recipient of the Partnership Program grant award. To submit a joint application, the lead applicant must identify the joint applicant(s) and include a signed statement from an authorized representative of each joint applicant entity that affirms the entity joins the application. See *Section D(2)* for further instructions about submitting a joint application.

An application submitted by Amtrak and one or more states must identify the lead applicant and include a signed cooperative agreement between Amtrak and the state(s) consistent with 49 U.S.C. 24911(a)(1)(F). Selection preference will be provided for joint applications, as further discussed in *Section E(1)*(c). Applications may reference entities that are not eligible applicants (*e.g.,* private sector firms) in an application as a project partner. However, FRA will provide selection preference to joint applications submitted by multiple eligible applicants.

2. Cost Sharing or Matching

The Federal share of total costs for a project funded under the Partnership Program shall not exceed 80 percent, though FRA will provide selection preference to applications where the proposed Federal share of total project costs is 50 percent or less. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and facilities. The minimum 20 percent non-Federal share may be comprised of public sector (*e.g.,* state or local) or private sector funding. However, FRA will not consider any other Federal grants, nor any non-Federal funds already expended (or otherwise encumbered), that do not comply with 2 CFR 200.458, as applicable, toward the matching requirement.

FRA is limiting the first 20 percent of the non-Federal match to cash contributions only. Contributions of specified items or activities may be accepted for any non-Federal matching beyond the first 20 percent. Such contributions including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with 2 CFR 200.306. Moreover, FRA encourages applicants to broaden their funding table in applications. FRA will give preference to non-Federal shares consisting of funding from multiple sources that demonstrate broad

[2] See Section D(2)(a)(iv) for supporting documentation required to demonstrate eligibility under this eligibility category.

participation and cost sharing from affected stakeholders. If Amtrak is an applicant, Amtrak may use its ticket and other non-Federal revenues generated from its operations and other sources to satisfy the non-Federal share requirements. Applicants must identify the source(s) of their matching and other funds, and must clearly and distinctly reflect these funds as part of the total project cost.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. FRA will approve pre-award costs consistent with 2 CFR 200.458. See *Section D(6).* Additionally, in preparing estimates of total project costs, applicants should refer to FRA's cost estimate guidance, ''Capital Cost Estimating: Guidance for Project Sponsors,'' which is available at: *https://www.fra.dot.gov/Page/P0926.*

3. Other

a. Project Eligibility

Projects eligible for Partnership Program funds include Capital Projects within the United States to replace or rehabilitate Qualified Railroad Assets and improve Intercity Passenger Rail performance, including:

(1) Capital Projects to replace existing assets in-kind;

(2) Capital Projects to replace existing assets with assets that increase capacity or provide a higher level of service;

(3) Capital Projects to ensure that service can be maintained while existing assets are brought into a State of Good Repair; and

(4) Capital Projects to bring existing assets into a State of Good Repair.

Qualified Railroad Assets, as further defined in *Section A(2),* are owned or controlled by an eligible applicant and may include: Infrastructure, including track, ballast, switches and interlockings, bridges, communication and signal systems, power systems, highway-rail grade crossings, and other railroad infrastructure and support systems used in intercity passenger rail service; stations, including station buildings, support systems, signage, and track and platform areas; equipment, including passenger cars, locomotives, and maintenance-of-way equipment; and facilities, including yards and terminal areas and maintenance shops.

Capital Projects, as further defined in *Section A(2),* may include final design; however, final design costs will only be eligible in conjunction with an award for project construction. Environmental and related clearances, including all work necessary for FRA to approve the project under the National Environmental Policy Act (NEPA) and related statutes and regulations are not eligible for funding under this notice. (See *Section D(2)*(a)(ix) for additional information.) Eligible projects with completed environmental and engineering documents indicate strong project readiness.

b. Additional Eligibility Requirements for NEC Projects

This section provides additional eligibility requirements for NEC Projects. Applicants proposing Non-NEC Projects are not subject to the requirements in this section, and may proceed to Section C(3)(c).

In the Partnership Program, grant funds may not be provided to an eligible recipient for an eligible NEC Project unless Amtrak and the public authorities providing commuter rail passenger transportation at the eligible project location on the NEC are in compliance with 49 U.S.C. 24905(c)(2). Applicants must demonstrate compliance with 49 U.S.C. 24905(c)(2) by describing the status of compliance with such cost-allocation policy between Amtrak and the public authorities providing commuter rail passenger transportation at the eligible project location, which may include demonstrating that such authorities are excepted from allocating costs for the proposed NEC Project, consistent with 49 U.S.C. 24905(c)(1)(A)(ii). Such providers must maintain compliance with 49 U.S.C. 24905(c)(2) for the duration of the project.

c. Project Component Operational Independence

If an applicant requests funding for a project that is a component or set of components of a larger project, the project component(s) must be attainable with the award amount and comply with all eligibility requirements described in *Section C.*

In addition, the component(s) must enable independent analysis and decision making, as determined by FRA under NEPA (*i.e.,* have independent utility, connect logical termini, and not restrict the consideration of alternatives for other reasonably foreseeable rail projects.) Components must have independent utility for use in the BCA.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See *Section D(2)* for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering and design documentation, and letters of support from partnering organizations that will not count against the Project Narrative page limit.

1. Address To Request Application Package

Applicants must submit all application materials in their entirety through *www.Grants.gov* no later than 5:00 p.m. EDT, on December 9, 2019. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.*

For any supporting application materials that an applicant cannot submit via *Grants.gov*, such as oversized engineering drawings, an applicant may submit an original and two (2) copies to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, explaining to FRA how to access files on a referenced website may also be sufficient.

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Additionally, applicants selected to receive funding must satisfy the requirements in 49 U.S.C. 22905 explained in part at *https://www.fra.dot.gov/page/P0185.*

Required documents for an application package are outlined in the checklist below.

- Project Narrative (see D.2.a).
- Statement of Work (see D.2.b.i).
- Benefit-Cost Analysis (see D.2.b.ii).
- Environmental Compliance Documentation (see D.2.b.iii).
- SF424—Application for Federal Assistance.
- SF 424C—Budget Information for Construction, or, for an equipment procurement project without any construction costs, or SF 424A—Budget Information for Non-Construction.
- SF 424D—Assurances for Construction, or, for an equipment procurement project without any

construction costs, or SF 424B—Assurances for Non-Construction.

- FRA's Additional Assurances and Certifications.
- SF LLL—Disclosure of Lobbying Activities.

a. Project Narrative

This section describes the minimum content required in the Project Narrative of grant applications. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page—See D.2.a.i
II. Project Summary—See D.2.a.ii
III. Project Funding—See D.2.a.iii
IV. Applicant Eligibility Criteria—See D.2.a.iv
V. Non-NEC Project Eligibility Criteria—See D.2.a.v
VI. NEC Project Eligibility Criteria—See D.2.a.vi
VII. Detailed Project Description—See D.2.a.vii
VIII. Project Location—See D.2.a.viii
IX. Grade Crossing Information, if applicable—See D.2.a.ix
X. Evaluation and Selection Criteria—See D.2.a.x
XI. Project Implementation and Management—See D.2.a.xi
XII. Environmental Readiness—See D.2.a.xii

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider for award applications with Project Narratives exceeding the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the relevant portion of the supporting document with the page numbers of the cited information in the Project Narrative. The Project Narrative must adhere to the following outline.

i. *Cover Page:* Include a cover page that lists the following elements in either a table or formatted list:

Project title	
Lead Applicant Organization Name	
Joint Applicant(s) Organization Name(s), if any	
Amount of Federal Funding Requested Under this NOFO	
Proposed Non-Federal Match	
Total Project Cost	
Was a Federal Grant Application Previously Submitted for this Project?	Yes/No
If Yes, State the Name of the Federal Grant Program and Title of the Project in the Previous Application	Federal Grant Program:
City(-ies), State(s) Where the Project is Located	
Congressional District(s) Where the Project is Located	

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project and what the project will entail. Include challenges the proposed project aims to address, and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Project Funding:* Indicate the amount of Federal funding requested, the proposed non-Federal match, and total project cost. Identify the source(s) of matching and other funds, and clearly and distinctly reflect these funds as part of the total project cost in the application budget. Also, note if the requested Federal funding under this NOFO or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. If applicable, provide the type and estimated value of any proposed contributions, as well as substantiate how the contributions meet the requirements in 2 CFR 200.306. For a Major Capital Project that would seek future funds beyond fiscal year 2019 funding made available in this notice, provide the anticipated annual Federal funding requests from this grant program for the expected duration of the project. Finally, specify whether Federal funding for the project has previously been sought, and identify the Federal program and fiscal year of the funding request(s), as well as highlight new or revised information in the Partnership Program application that differs from the application(s) to other financial assistance programs.

iv. *Applicant Eligibility Criteria:* Explain how the lead applicant and joint applicant(s) meet the applicant eligibility criteria outlined in *Section C* of this notice, including references to creation or enabling legislation for public agencies and publicly chartered authorities established by one or more states. To submit a joint application, the lead applicant must identify the joint applicant(s) and include a signed statement from an authorized representative of each joint applicant entity that affirms the entity joins the application. Joint applications are expected to include a description of the roles and responsibilities of each applicant, including budget and subrecipient information showing how the applicants will share project costs.

v. *Non-NEC Project Eligibility Criteria:* This section provides project eligibility requirements for Non-NEC Projects. Applicants proposing NEC Projects may skip this section and proceed to section D(2)(a)(vi). For Non-NEC Projects, demonstrate that the proposed project is a Capital Project that meets the project eligibility criteria in *Section C(3)* of this notice. Further, demonstrate that the infrastructure, equipment and/or facilities involved in the proposed project are Qualified Railroad Assets under 49 U.S.C. 24911(a)(5), as follows:

(A) To demonstrate ownership or control by an eligible applicant under 49 U.S.C. 24911(a)(5)(A), show either:

(1) The lead or joint applicant owns or will, at project completion, have ownership of the infrastructure, equipment, or facility improved by the project; or

(2) The lead or joint applicant controls or will, at project completion, have control over the infrastructure,

equipment, or facility improved by the project including by agreement with the infrastructure, equipment, or facility owner(s). Applicants should describe such agreement(s) in sufficient detail in their application for FRA to understand the extent of the control, including the lead or joint applicant's management and decision-making authority regarding the infrastructure, equipment, or facility improved by the project, and the remaining or anticipated duration of the agreement(s). Agreements involving railroad rights-of-way should also demonstrate the lead or joint applicant has train dispatching and maintenance-of-way responsibilities for the right-of-way.

(B) To demonstrate the requirements under 49 U.S.C. 24911(a)(5)(B), show that the infrastructure, equipment, or facilities involved in the proposed project are contained in a planning document equivalent to the planning document developed under 49 U.S.C. 24904 and which has a similar cost-allocation policy to the cost-allocation policy developed under 49 U.S.C. 24905(c) has been developed.

Non-NEC Projects may satisfy the equivalent planning document requirement by demonstrating the project is contained in the planning document(s) prepared under 49 U.S.C. Chapter 227, ''State Rail Plans,'' for the state(s) where the infrastructure, equipment and facilities are located or in primary use. Applicants with projects contained in a State Rail Plan should indicate the location (*e.g.,* table or page number) where the project is discussed in the document. If a project is not contained in the State Rail Plan, applicants may demonstrate the infrastructure, equipment and facilities involved in the proposed project are contained in an equivalent planning document, or amend the relevant State Rail Plan(s) to contain the project. Amending a State Rail Plan requires a letter to FRA from an authorized representative of the relevant state rail transportation authority adding the proposed project to the plan and stating that the letter serves as an addendum to the current plan. Such a letter should include the project name, a brief description of the project, and estimated project cost and Federal and non-Federal share by funding source. FRA encourages state rail transportation authorities to make any such addendum letters publicly available with their State Rail Plans. FRA recommends such letters be submitted as part of an applicant's Partnership Program application via *Grants.gov*. Whether submitted as part of a Partnership Program application package or separately to FRA, FRA must receive the letter by the application due date of this notice.

Non-NEC Projects must satisfy the similar cost-allocation policy requirement either by demonstrating the infrastructure, equipment or facilities involved in the proposed project are for routes subject to the cost-allocation policy adopted under Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Public Law 110–432, Oct. 16, 2008; or by demonstrating the infrastructure, equipment or facilities involved in the proposed project are subject to a similar cost-allocation policy.

(C) To demonstrate the state of good repair requirement under 49 U.S.C. 24911(a)(5)(B):

(1) Describe the condition and performance of the infrastructure, equipment, or facility as of the time of enactment of the Passenger Rail Reform and Investment Act of 2015 (Dec. 4, 2015);

(2) indicate how the infrastructure, equipment, or facility's condition or performance falls short of the definition of ''State of Good Repair'' in *Section A(2);* and

(3) indicate, if known, when the infrastructure, equipment, or facility last received comprehensive repair, replacement, or rehabilitation work similar to the applicant's proposed scope of work.

vi. *NEC Project Eligibility Criteria:* This section provides project eligibility requirements for NEC Projects. (Applicants proposing Non-NEC Projects may skip this section and proceed to *Section D*(2)(a)(vii).) For NEC Projects, demonstrate that the proposed project is a Capital Project that meets the project eligibility criteria in *Section C(3)* of this notice including the requirements in 49 U.S.C. 24911(e). Further, demonstrate that the infrastructure, equipment, and/or facilities involved in the project are Qualified Railroad Assets under 49 U.S.C. 24911(a)(5), as follows:

(A) To demonstrate ownership or control by an eligible applicant under 49 U.S.C. 24911(a)(5)(A), show either:

(1) The lead or joint applicant owns or will, at project completion, have ownership of the infrastructure, equipment, or facility improved by the project; or

(2) The lead or joint applicant controls or will, at project completion, have control over the infrastructure, equipment, or facility improved by the project including by agreement with the infrastructure, equipment, or facility owner(s). Applicants should describe such agreement(s) in sufficient detail in their application for FRA to understand the extent of the control, including the lead or joint applicant's management and decision-making authority regarding the infrastructure, equipment, or facility improved by the project, and the remaining or anticipated duration of the agreement(s). Agreements involving railroad rights-of-way should also demonstrate the lead or joint applicant has train dispatching and maintenance-of-way responsibilities for the right-of-way.

(B) To demonstrate the requirements under 49 U.S.C. 24911(a)(5)(B), show that the infrastructure, equipment, or facilities involved in the proposed project are contained in the planning document developed under 49 U.S.C. 24904 and for which a cost-allocation policy has been developed under 49 U.S.C. 24905(c), or are contained in an equivalent planning document and for which a similar cost-allocation policy has been developed.

NEC Projects must satisfy the planning document requirement by demonstrating the project is contained in the current approved planning document developed under 49 U.S.C. 24904 (*i.e.,* the NEC Commission Five-Year Capital Investment Plan). Applicants with projects contained this plan should indicate the location (*e.g.,* table or page number) where the project in discussed in the document. If an NEC Project is not contained in the 49 U.S.C. 24904 planning document at the time of this notice, applicants may demonstrate that the infrastructure, equipment and facilities involved in the proposed project are contained in an equivalent planning document, or update the 49 U.S.C. 24904 planning document to contain the project by the due date for applications under this notice. An equivalent planning document may include a planning document developed under 49 U.S.C. 24320(c).

NEC Projects must satisfy the cost-allocation policy requirement by demonstrating the infrastructure, equipment, or facilities are subject to the cost-allocation policy developed under 49 U.S.C. 24905(c) (*i.e.,* Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy), or a similar cost-allocation policy.

(C) To demonstrate the state of good repair requirement under 49 U.S.C. 24911(a)(5)(C), the NEC applicant must:

(1) Describe the condition and performance of the infrastructure, equipment, or facility as of the time of enactment of the Passenger Rail Reform and Investment Act of 2015 (Dec. 4, 2015);

(2) indicate how the infrastructure, equipment, or facility's condition or

performance falls short of the definition of State of Good Repair'' in *Section A(2);* and

(3) indicate, if known, when the infrastructure, equipment, or facility last received comprehensive repair, replacement, or rehabilitation work similar to the applicant's proposed scope of work.

vii. *Detailed Project Description:* Include a detailed project description that expands upon the brief summary required above. This detailed description must provide, at a minimum: Additional background on the challenges the project aims to address; the expected users and beneficiaries of the project, including all railroad operators; the specific components and elements of the project; and any other information the applicant deems necessary to justify the proposed project. Applicants with Major Capital Projects are encouraged to identify and describe project phases or elements that would be candidates for subsequent Partnership Program funding if such funding becomes available. Include information to demonstrate the project is reasonably expected to begin construction in a timely manner. For all projects, applicants must provide information about proposed performance measures, as described in *Section F(3)*(c) and required in 2 CFR 200.301.

viii. *Project Location:* Include geospatial data for the project, as well as a map of the project's location. Include the Congressional districts in which the project will take place.

ix. *Grade Crossing Information, if applicable:* For any project that includes grade crossing components, cite specific DOT National Grade Crossing Inventory information, including the railroad that owns the infrastructure (or the crossing owner, if different from the railroad), the primary railroad operator, the DOT crossing inventory number, and the roadway at the crossing. Applicants can search for data to meet this requirement at the following link: *http://safetydata.fra.dot.gov/OfficeofSafety/default.aspx.*

x. *Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed project meets all of the evaluation and selection criteria, as outlined in *Section E* of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application.

xi. *Project Implementation and Management:* Describe proposed project implementation and project management arrangements including as between the lead and joint applicants. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting. Describe past experience in managing and overseeing similar projects. For Major Capital Projects, explain plans for a rigorous project management and oversight approach.

xii. *Environmental Readiness:* If the NEPA process is complete, indicate the date of completion, and provide a website link or other reference to the final Categorical Exclusion determination, Finding of No Significant Impact, or Record of Decision, as well as any other NEPA documents prepared. If the NEPA process is not complete, the application should detail the type of NEPA review underway, if applicable, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and why NEPA documents have not been updated and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements. Additional information regarding FRA's environmental processes and requirements are located at *https://www.fra.dot.gov/environment.*

b. Additional Application Elements

Applicants must submit:

i. A Statement of Work (SOW) addressing the scope, schedule, and budget for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must use FRA's standard SOW, schedule, and budget templates to be considered for award. The templates are located at *https://www.fra.dot.gov/Page/P0325.*

When preparing the budget, the total cost of a project must be based on the best available information as indicated in cited references that include engineering studies, economic feasibility studies, environmental analyses, and information on the expected use of equipment or facilities. For Major Capital Projects, the SOW must include annual budget estimates and anticipated Federal funding for the expected duration of the project.

ii. A Benefit-Cost Analysis consistent with 49 U.S.C. 24911(d)(2)(A) that demonstrates the merit of investing in the proposed project. The BCA should include anticipated private and public benefits relative to the costs of the proposed project, including:

i. Effects on system and service performance;

ii. effects on safety, competitiveness, reliability, trip or transit time, and resilience;

iii. efficiencies from improved integration with other modes; and

iv. ability to meet existing or anticipated demand.

The BCA should be systematic, data driven, and examine the trade-offs between reasonably expected project costs and benefits. Applicants are encouraged to include quantifiable railroad data related to the Qualified Railroad Assets involved in the project, such as information on delay, failure or safety incidents, passengers carried (*e.g.,* ridership), daily train movements, or similar metrics. The complexity and level of detail in the Benefit-Cost Analysis prepared for the Partnership Program should reflect the scope and scale of the proposed project. Please refer to the Benefit-Cost Analysis Guidance for Discretionary Grant Programs prior to preparing a BCA at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance.* In addition, please also refer to the BCA FAQs on FRA's website (*https://www.fra.dot.gov/grants*) for some rail-specific examples of how to apply the Benefit-Cost Analysis Guidance for Discretionary Grant Programs to Partnership applications.

iii. Environmental compliance documentation, if a website link is not cited in the Project Narrative.

iv. SF 424—Application for Federal Assistance.

v. SF 424C—Budget Information for Construction, or, for an equipment procurement project without any other construction elements, the SF 424A—Budget Information for Non-Construction.

vi. SF 424D—Assurances for Construction, or, for an equipment procurement project without any other construction elements, the SF 424B—Assurances for Non-Construction.

vii. FRA's Additional Assurances and Certifications.

viii. An SF LLL—Disclosure of Lobbying Activities.

Forms needed for the electronic application process are at *www.Grants.gov.*

c. Post-Selection Requirements

See *Section F(2)* of this notice for post-selection requirements.

3. Unique Entity Identifier, System for Award Management (SAM), and Submission Instructions

To apply for funding through *Grants.gov*, applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov*. Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable Data Universal Numbering System (DUNS) and SAM requirements and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. (Please note that if a Dun & Bradstreet DUNS number must be obtained or renewed, this may take a significant amount of time to complete.) Late applications that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must:

a. Obtain a DUNS Number

A DUNS number is required for *Grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for the government in identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

b. Register With the SAM at *www.SAM.gov*

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award. Information about SAM registration procedures is available at *www.sam.gov.*

c. Create a *Grants.gov* Username and Password

Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The E-Biz POC at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp, in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

4. Submission Dates and Times

Applicants must submit complete applications to *www.Grants.gov* no later than 5:00 p.m. EDT, December 9, 2019. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Delayed registration is not an acceptable reason for late submission. In order to apply for funding under this announcement, all applicants are expected to be registered as an organization with *Grants.gov*. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Executive Order 12372 requires applicants from state and local units of government or other organizations providing services within a state to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the state. Applicants must contact their State

SPOC to determine if the program has been selected for state review.

6. Funding Restrictions

FRA will not fund any preliminary engineering, environmental work, or related clearances under this NOFO. FRA will only consider funding a project's final design activities if the applicant is also seeking funding for construction activities. FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work consistent with 2 CFR 200.458. Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without FRA's written approval may not be eligible for reimbursement or included as a grantee's matching contribution.

FRA is prohibited under 49 U.S.C. 22905(f) [3] from providing Partnership Program grants for Commuter Rail Passenger Transportation. FRA's interpretation of this provision is informed by the language in 49 U.S.C. 24911, and specifically the definitions of capital project in 49 U.S.C. 24911(a)(2)(A) and (B). FRA's primary intent in funding Partnership Program projects is to make reasonable investments in Capital Projects used in Intercity Rail Passenger Transportation. Such projects may be located on shared corridors where Commuter Rail Passenger Transportation also benefits from the project.

7. Other Submission Requirements

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.* See *section D.1* of this NOFO for information on where applications must be submitted.

E. Application Review Information

1. Criteria

Eligibility and Completeness Review

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in *Section C* of this notice), completeness (application documentation and submission requirements are outlined in *Section D* of this notice), and the 20 percent minimum non-Federal match in determining whether the application is eligible.

Evaluation Criteria

FRA subject-matter experts will evaluate all eligible and complete applications against the following evaluation criteria:

i. Technical Merit: FRA will to take into account—

(A) The degree to which the tasks and subtasks outlined in the SOW are appropriate to achieve the expected outcomes of the proposed project;

(B) The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget;

(C) The degree to which the proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project;

(D) Whether the applicant has, or will have, the legal, financial, and technical capacity to carry out the project; satisfactory continuing control over the use of the equipment or facilities; and the capability and willingness to maintain the equipment or facilities;

(E) The applicant's past performance in developing and delivering similar projects, and previous financial contributions;

(F) Whether the project has completed necessary pre-construction activities and indicates strong project readiness; and

(G) Whether the project is consistent with planning guidance and documents set forth by the Secretary of Transportation or required by law.

ii. Project Benefits: FRA will take into account the benefit-cost analysis of the proposed project, including anticipated private and public benefits relative to the costs of the proposed project including—

(A) Effects on system and service performance;

(B) Effects on safety, competitiveness, reliability, trip or transit time, and resilience;

(C) Efficiencies from improved integration with other modes; and

(D) Ability to meet existing or anticipated demand.

Selection Criteria

In addition to the eligibility and completeness review and the evaluation criteria outlined in this section, the FRA Administrator (or his designee), in consultation with a Senior Review Team that includes senior leadership from the Office of the Secretary and FRA, will apply the selection criteria:

i. FRA will give preference to eligible projects for which:

(A) Amtrak is not the sole applicant;

(B) Applications were submitted jointly by multiple eligible applicants; and

(C) The proposed Federal share of total project costs does not exceed 50 percent.

ii. After applying the above preferences, FRA will take in account the following key Departmental priorities:

(A) Supporting economic vitality at the national and regional level;

(B) Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment;

(C) Preparing for future operations and maintenance costs associated with a project's life-cycle, as demonstrated by a credible plan to maintain assets without having to rely on future Federal funding;

(D) Using innovative approaches to improve safety and expedite project delivery;

(E) Holding grant recipients accountable for grant performance and achieving specific, measurable outcomes identified by grant applicants;

(F) Proposed non-Federal share is comprised of more than one source, including private sources, demonstrating broad participation by affected stakeholders; and

(G) Applications indicate strong project readiness.

iii. For NEC Projects, FRA will consider the appropriate sequence and phasing of projects as contained in the Northeast Corridor capital investment plan developed pursuant to 49 U.S.C. 24904(a).

iv. In determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, the applicant's receipt of other competitive awards, projects located in or that support transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1, and the percentage of non-Federal share provided and whether such non-Federal share is provided by multiple sources.

2. Review and Selection Process

FRA will conduct a three-part application review process, as follows:

[3] Under 49 U.S.C. 24911(i), Partnership grants are subject to the conditions in 49 U.S.C. 22905.

a. Screen applications for completeness and eligibility;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria); and

c. Select projects for funding (completed by the FRA Administrator or his designee) applying the selection criteria in consultation with the Senior Review Team.

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notice

FRA will announce applications selected for funding in a press release and on the FRA website after the application review period. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. A formal grant agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, is required before the award is considered complete. See an example of standard terms and conditions for FRA grant awards at *https://www.fra.dot.gov/eLib/details/L05285.*

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the DOT; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the DOT determines that a recipient has failed to comply with applicable Federal requirements, the DOT may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises; debarment and suspension; drug-free workplace; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; environmental justice and the grant conditions in 49 U.S.C. 22905 including the Buy America requirements, the provision deeming operators rail carriers and employers for certain purposes, grantee agreements with railroad right-of-way owners for projects using railroad rights-of-way, and compliance with 49 U.S.C. 24905(c)(2) for the duration of NEC Projects.

See an example of standard terms and conditions for FRA grant awards at *https://www.fra.dot.gov/eLib/details/L05285.*

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically.

The applicant must comply with all relevant requirements of 2 CFR part 200.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/details/L05285.*

If the Federal share of any Federal award under this NOFO may include more than $500,000 over the period of performance, applicants are informed of the post award reporting requirements reflected in 2 CFR part 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

c. Performance Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives. Examples of some rail performance measures are listed in the table below. The applicable measure(s) will depend upon the type of project. Applicants requesting funding for rolling stock must integrate at least one equipment/rolling stock performance measure, consistent with the grantee's application materials and program goals.

PERFORMANCE MEASURE

Rail measures	Unit measured	Temporal	Primary strategic goal	Secondary strategic goal	Description
Slow Order Miles	Miles	Annual	State of Good Repair	Safety	The number of miles per year within the project area that have temporary speed restrictions (''slow orders'') imposed due to track condition. This is an indicator of the overall condition of track. This measure can be used for projects to rehabilitate sections of a rail line since the rehabilitation should eliminate, or at least reduce the slow orders upon project completion.
Rail Track Grade Separation	Count	Annual	Economic Competitiveness.	Safety	The number of annual automobile crossings that are eliminated at an at-grade crossing as a result of a new grade separation.
Passenger Counts	Count	Annual	Economic Competitiveness.	State of Good Repair	Count of the annual passenger boardings and alightings at stations within the project area.
Travel Time	Time/Trip	Annual	Economic Competitiveness.	Quality of Life	Point-to-point travel times between pre-determined station stops within the project area. This measure demonstrates how track improvements and other upgrades improve operations on a rail line. It also helps make sure the railroad is maintaining the line after project completion.
Track Miles	Miles	One Time	State of Good Repair	Economic Competitiveness.	The number of track miles that exist within the project area. This measure can be beneficial for projects building sidings or sections of additional main line track on a railroad.

G. Federal Awarding Agency Contacts

For further project or program-related information in this notice, please contact Mr. Bryan Rodda, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–203, Washington, DC 20590; email: *Bryan.Rodda@dot.gov*; phone: 202–493–0443. Grant application submission and processing questions should be addressed to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov*; phone: 202–493–0303.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

FRA protects such information from disclosure consistent with applicable law. In the event FRA receives a Freedom of Information Act (FOIA) request for the information, FRA will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued in Washington, DC.

Ronald L. Batory,

Administrator.

[FR Doc. 2019–21866 Filed 10–7–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0078]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 9, 2019, the New York & Lake Erie Railroad (NYLE) petitioned the Federal Railroad Administration (FRA) to renew and extend previous waivers of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223. Specifically, NYLE seeks relief from the glazing requirements in 49 CFR 223.11, *Requirements for existing locomotives,* for four locomotives (NYLE 85, NYLE 308, NYLE 6758, and NYLE 6764). These locomotives were formerly covered under Docket Numbers FRA–2000–8267, FRA–2004–19950, and FRA–2013–0104. FRA has assigned this petition Docket Number FRA–2019–0078.

NYLE states that installing FRA-required glazing remains cost-prohibitive due to the increased cost of materials and labor. NYLE explains that the locomotives are used in rural areas at low speeds. NYLE further states that the units are used for both freight and passenger service in Titusville, PA, and occasionally used for freight and passenger service in Gowanda, NY.

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 22, 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. 2019–21939 Filed 10–7–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0022; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain MY 2017–2019 Audi A3 motor vehicles do not comply with Federal motor vehicle safety standard (FMVSS) No. 101, *Controls and Displays.* Volkswagen filed a noncompliance report dated February 18, 2019, and later amend it on September 13, 2019. Volkswagen subsequently petitioned NHTSA on February 20, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Volkswagen's petition.

DATES: Send comments on or before November 7, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen has determined that certain MY 2017–2019 Audi A3 motor vehicles do not comply with paragraph S5.2.1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). Volkswagen filed a noncompliance report dated February 18, 2019, and later amended it on September 13, 2019, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen subsequently petitioned NHTSA on February 20, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 40 U.S.C. 30118 and 49 U.S.C. 30120, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 18,379 MY 2017–2019 Audi A3 sedan, Cabriolet, RS3, and e-Tron motor vehicles, manufactured between July 7, 2016, and January 7, 2019, are potentially involved.

III. Noncompliance: Volkswagen explains that the noncompliance is that the subject vehicles are equipped with speedometers that only display the vehicle's speed in units of either miles per-hour (mph) or kilometers-per-hour (km/h) and therefore do not meet the requirements set forth in paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101.

IV. Rule Requirements: Paragraphs S5.2.1 and Table 1, Column 3 of FMVSS No. 101 provides that each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of FMVSS No. 101 for the location, identification, color, and

illumination of that control, telltale or indicator.

Each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2.

V. Summary of Volkswagen's Petition: The following views and arguments presented in this section, V. Summary of Volkswagen's Petition, are the views and arguments provided by Volkswagen. They have not been evaluated by the agency and do not reflect the views of the Agency.

Volkswagen described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety.

Volkswagen submitted the following views and arguments in support of the petition:

1. All affected Audi A3 vehicles are initially delivered for first-sale in the U.S. market in a compliant state (speed displayed in miles-per-hour). Only through driver interaction, within the settings menu, can the speedometer display be changed from mph to km/h. The change between the display settings must be done intentionally and cannot be accomplished inadvertently.

2. In the affected 2017–2019 MY Audi A3 vehicles, the two speedometer scales are noticeably different. Were the previous driver to have changed the display, a subsequent driver would be able to tell at a glance that the scale is not in mph.

3. The indicated vehicle speed in km/h is 1.6 times greater than the speed in mph. Audi purports that if the vehicle operator changes the display to indicate km/h and later has not changed the display back to mph, the vehicle operator will clearly recognize that the vehicle is moving at a lower speed than intended and adjust their vehicle speed to match road and traffic conditions. Notice of the speed differential advises the vehicle operator to perform the necessary steps to adjust the speedometer back to mph (at the next appropriate opportunity).

4. The 2017–2019 MY Audi A3 Owner Manuals contains information and instructions for changing the units displayed, via the Infotainment system, using the MMI Settings menu. Therefore, if a vehicle operator needs to change the display to indicate mph, instructions are available. As of January 08, 2019, production has been corrected, vehicles withheld at the factory have been corrected and unsold units will be corrected prior to sale.

5. Additionally, Volkswagen is not aware of any field or customer complaints related to this condition, nor has it been made aware of any accidents or injuries that have occurred as a result of this issue.

Volkswagen concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–21892 Filed 10–7–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0027; Notice No. 2018–09]

Hazardous Materials: Clarification of Process To Reissue Explosives Classification Approvals

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: PHMSA issues this notice to clarify and request comments on the Approvals Program procedures for companies to request a modification to an explosives classification approval to reflect a merger, acquisition, or change in name or legal status.

DATES: Interested persons are invited to submit comments on or before January 6, 2020.

ADDRESSES: You may submit comments identified by Docket No. PHMSA–2018–0027 via any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Internet users may access comments received by the DOT at: *http://www.regulations.gov.* Please note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), the DOT solicits comments from the public. The DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: *Pipeline and Hazardous Materials Safety Administration:* Laura Ulmer, Attorney-Advisor (PHC–10), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

As defined in title 49, section 173.56 of the Code of Federal Regulations (CFR), a ''new explosive'' is an explosive produced by a person who either has not previously produced that explosive, or has previously produced that explosive, but has made a change in the formulation, design, or process so as to alter any of the properties of the

explosive. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require that each new explosive be examined by a DOT-approved explosives test laboratory and assigned a recommended shipping description, division, and compatibility group in accordance with § 173.56(b). This classification must be approved by PHMSA. Applications are submitted and approvals are issued per the requirements in 49 CFR part 107, subpart H. These explosive classification approvals are generally known as ''EX'' approvals. A ''person,'' as defined in 49 CFR 171.8, must obtain an approval classifying each new explosive that he or she offers or transports to, from, or within the United States. In December 2015, PHMSA posted a document titled ''EXPLOSIVES CLASSIFICATION (EX) APPROVALS (Company Name Changes, Mergers, Acquisitions, and Changes in Legal Structure)'' on its website, *http://www.phmsa.dot.gov.* This document clarified that: (1) An EX approval is non-transferable in any merger, acquisition, sale of assets, or other business transaction; (2) an EX approval is non-transferrable in bankruptcy proceedings, and thus, a debtor may not use an EX approval as an asset to sell in order to drive up the purchase price; and (3) PHMSA may reissue the EX approvals in certain situations to reflect the new company name, when adequate documentation is submitted. The document also included frequently asked questions on several common merger, acquisition, and legal-status change scenarios and provided instructions on how companies could request a modification of an EX approval to reflect a status change. Companies can also choose to apply for new EX approvals instead of requesting to go through the company name-change process.

The specific scenarios and documentation requirements included in the document led to questions and concerns from the regulated community. Therefore, we are clarifying the description of the program procedures and documentation required for PHMSA to reissue EX approvals. Specifically, we have revised the guidance to remove the requirement that the applicant declare that the information that it is providing for the certification is correct, under penalty of perjury, after certain members of the regulated community had concerns about swearing under penalty of perjury that documents they did not personally draw up were complete and correct. PHMSA acknowledges those concerns, and believes that the modification of the certification letter contents will alleviate these concerns. The guidance also clarifies that companies which request a modification at least 30 days prior to the merger, acquisition, or legal-status change can continue to use their existing approvals until PHMSA takes final administrative action on the application for modification. PHMSA is seeking comments on:

1. The contents of the certification letter;

2. the description of the timeline for applying and processing a name change; and

3. information requested for additional facilities.

II. Clarification of Requirements To Reissue Approvals

Companies always have the option to apply for a new EX approval in anticipation of a merger, acquisition, or other change in corporate structure or form. Alternatively, PHMSA may reissue existing EX approvals when adequate documentation is provided for the types of corporate changes described in this guidance. Provided a request to reissue an EX approval is made at least 30 days prior to the anticipated corporate change, the new entity may continue to use the existing EX approval until PHMSA reaches a final decision on the request. Title 49 CFR part 107, subpart H and § 173.56(b) set out the requirements for applying for an EX approval. Table 1, below, explains what is meant by various types of requested documents. Table 2, which follows, explains which of these documents are requested for an EX approval to be reissued in different scenarios.

TABLE 1—TYPES OF DOCUMENTATION

Certification Letter	When applicable, the company requesting the reissued approval will submit a certification letter that: A. Is signed by a director or officer of the company requesting the reissued approval; B. states that the company is not producing a new explosive and that there has been no change in the formulation, design, or process so as to alter any of the properties of the explosive; and C. states that the requesting company understands that failure to provide accurate and complete information could result in the modification, suspension, or termination of the approval.
Approvals List	A list of EX approval numbers and product descriptions, and a copy of each EX approval that the company is requesting that PHMSA reissue.
Lab Report	Copies of any laboratory reports or technical drawings in the company's possession relating to the requested EX approvals.
Proof of Change	Legal documentation of the applicable change (e.g., certification of merger, sales agreement, etc.).
Relinquishment Letter	When applicable, the company that initially held the approval should provide a letter that: A. Is signed by a director or officer of the company holding the initial approval; and B. states that the company holding the initial approval voluntarily relinquishes all the rights to the EX approval numbers listed in the document and that they will no longer manufacture the explosives approved under those respective EX approvals.

TABLE 2—REQUESTED DOCUMENTATION TO REISSUE APPROVALS IN DIFFERENT SCENARIOS

Scenario		Documents requested to reissue EX approval				
		Cert. letter	EX number list	Lab reports	Proof of change	Relinquishment letter
Merger	Hazmat Companies A, B, C, and D are merging to create new company X, which is legally distinct from its predecessors. Company X wants to perform activities that require an EX approval.	*Yes*	*Yes*	*Yes*	*Yes (merger certification)*	*No.*

TABLE 2—REQUESTED DOCUMENTATION TO REISSUE APPROVALS IN DIFFERENT SCENARIOS—Continued

Total Purchase	Company A buys 100% of Company B. Both companies hold EX approvals. Company B will now operate under Company A's name. Company A wants to use Company B's EX approvals.	*Yes*	*Yes*	*Yes*	*Yes (sales agreement)*	*No.*
Partial Purchase (Assets).	Company A buys less than 100% of Company B's assets. Company A wants to use Company B's EX approvals.	*Yes*	*Yes*	*Yes*	*Yes (sales agreement)*	*Yes.*
Subsidiary (Separate Legal Entities).	X Corporation has three subsidiaries that are distinct legal entities: • X LLC, • X Inc., and • X LP. X Corporation wants to use X Inc.'s EX approvals.	N/A. Reissuing of EX numbers is not permitted. Each of the four companies (one parent and three subsidiaries) needs EX approvals for covered activities. Each of these entities is a separate ''person'' based on the definition PHMSA uses. The term ''person'' refers to each separate legal entity, such as a corporation, partnership, association, or LLC, or LP. This means that a separately incorporated subsidiary (or LLC or LP) must apply for their own approval if it engages in activities that require an EX approval, even when a parent company already holds an EX approval.				
New Additional, U.S. Facility.	Company X adds a new U.S. facility. The principal place of business and manufacturing process do not change.	N/A. No change needed.				
New Primary, U.S. Facility.	Company X changes ''principal place of business'' to new U.S. facility, and therefore must submit an application to amend its EX approval.	*No*	*Yes*	*Yes*	*No*	*No.*
Additional Facility Abroad.	Company X purchases an additional manufacturing plant location outside of the United States.	N/A. All manufacturing locations outside of the U.S. are required to apply for their own EX approvals.				
New Name, Same Legal Structure.	Company X changes its name to ''Company Y,'' but does not change the legal structure or ownership of the company.	*No*	*Yes*	*Yes*	*No*	*No.*
New Name, New Legal Structure.	Company X, LLC changes its name to ''Company X, Inc.'' indicating a change in legal structure. Company X., Inc. wants to use Company X, LLC's approval.	*Yes*	*Yes*	*Yes*	*No*	*No.*
Bankruptcy	Debtor holds an EX approval with PHMSA and goes into bankruptcy.	N/A. EX approvals are non-transferrable and cannot be treated as assets in the event of a bankruptcy.				

Signed in Washington, DC, on October 2, 2019.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–21964 Filed 10–7–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 7, 2019.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 2, 2019.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		SPECIAL PERMITS DATA	
20942–N	BETTER HORSE INC	173.124(a)	To authorize the transportation in commerce of certain hazardous materials that have been reclassified from pyrotechnic articles to flammable solids. (modes 1, 2, 3)
20943–N	Zhejiang Meenyu Can Industry Co., Ltd.	173.304(a), 173.304(d)	To authorize the manufacture, mark, sale, and use of non-DOT specification receptacles. (modes 1, 2, 3)
20944–N	LINDE GAS NORTH AMERICA LLC.	173.304a(a)	To authorize the transportation in commerce of non-DOT specification cylinders. (modes 1, 3)
20945–N	AIR MEDICAL RESOURCE GROUP, INC.	172.101(j), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1).	To authorize the transportation in commerce of limited quantities of hazardous materials that exceed quantity limitations by air. (mode 5)
20946–N	VOLKSWAGEN AG	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft. (mode 4)
20947–N	Tmk Technics Corporation	171.2(k), 172.200, 172.400, 172.700(a).	To authorize the transportation in commerce of certain DOT 3AL, cylinders that contain carbon dioxide, with alternative hazard communication. Additionally, cylinders with a gauge pressure less than 200 kPa (29.0 psig/43.8 psia) at 20 °C (68 °F) are authorized to be transported as a hazardous material under the conditions of this special permit. (modes 1, 2, 3)
20948–N	KOCSIS TECHNOLOGIES, INC.	173.302(a)	To authorize the transportation in commerce of a non-DOT specification cylinder for the transportation of the hazardous materials. (modes 1, 2, 3, 4)
20949–N	SIGMA–ALDRICH, INC	178.601(k)	To authorize the testing of combination 4G fiberboard boxes for the transportation in commerce of hazardous materials in which the inner packagings have been used multiple times to complete the tests in §§ 178.603, 178.606, and 178.608. (modes 1, 2, 3, 4, 5)
20950–N	ZHEJIANG CHUMBOON IRON–PRINTING & TIN–MAKING CO., LTD.	173.304(d)	To authorize the manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container. (modes 1, 2, 3, 4)
20951–N	KALITTA AIR, L.L.C	172.101(j), 172.203(a), 172.301(c), 173.27(b)(2), 175.30(a)(1).	To authorize the transportation in commerce of explosives forbidden for air transportation by cargo-only aircraft. (mode 4)
20952–N	CAPELLA SPACE CORP	173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment by cargo-only aircraft. (mode 4)

[FR Doc. 2019–21889 Filed 10–7–19; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 23, 2019.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 02, 2019.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
4661–M	ALBEMARLE U.S. INC	180.205(b), 180.205(c), 180.205(f), 180.205(g), 180.213.	To modify the special permit to authorize additional Class 3 hazmat. (modes 1, 2, 3).
11993–M	KEY SAFETY SYSTEMS, INC.	173.301(a)(1), 173.302a	To modify the special permit to remove the five year restriction on the manufactured pressure vessels. (modes 1, 2, 3, 4, 5).
12116–M	PROSERV UK LTD	173.201, 173.301(f), 173.302a, 173.304a.	To modify the special permit to authorize additional size cylinders to be manufactured. (modes 1, 2, 3, 4).
12440–M	LUXFER INC	173.301(a)(1), 173.302(a), 173.304(a), 180.205(a).	To modify the special permit to authorize an additional Division 2.2 hazmat. (modes 1, 2, 3, 4).
12516–M	POLY–COAT SYSTEMS, INC	107.503(b), 107.503(c), 173.241, 173.242.	To modify the special permit to remove the requirement that the special permit number be shown on shipping papers. (mode 1).
13270–M	JOYSON SAFETY SYSTEMS ACQUISITION LLC.	173.301(a)(1), 173.302a	To modify the special permit to remove the five year from manufacture date restriction for transporting. (modes 1, 2, 3, 4, 5).
14661–M	FIBA TECHNOLOGIES, INC	180.209(a), 180.209(b)(1)(i), 180.209(b)(1)(v).	To modify the special permit to add an additional hazmat and to incorporate non-DOT specification cylinders made under special permit into the permit. (modes 1, 2, 3).
14799–M	JOYSON SAFETY SYSTEMS SACHSEN GMBH.	173.301(a)(1), 173.302a	To modify the special permit to remove the five year from manufacture restriction on transporting. (modes 1, 2, 3, 4, 5).
14833–M	JOYSON SAFETY SYSTEMS ASCHAFFENBURG GMBH.	173.301(a)(1), 173.302a, 178.65(f)(2).	To modify the special permit to remove the five year from manufacture restriction on transporting the articles. (modes 1, 2, 3, 4, 5).
14919–M	JOYSON SAFETY SYSTEMS ACQUISITION LLC.	173.301(a)(1), 173.302a, 178.65(f)(2).	To modify the special permit to remove the five year from manufacture date restriction on transporting the articles. (modes 1, 2, 3, 4, 5).
15238–M	REEDER FLYING SERVICE, INC.	172.101(j), 172.200, 172.204(c)(3), 172.301(c), 173.27(b)(2), 175.30(a)(1), 175.75.	To modify the special permit to authorize additional Class 9 hazmat to be transported. (mode 1).
15372–M	EQUIPO AUTOMOTRIZ AMERICANA, S.A. DE C.V.	173.301(a)(1), 173.302a	To modify the special permit to remove the five year from manufacture restriction on transporting the articles. (modes 1, 2, 3, 4, 5).
15552–M	POLY–COAT SYSTEMS, INC	107.503(b), 107.503(c), 173.241, 173.242, 173.243, 172.203(a).	To modify the special permit to remove the requirement that the special permit number be shown on a shipping paper. (mode 1).
16011–M	AMERICASE, LLC	172.200, 172.300, 172.500, 172.400, 172.600, 172.700(a), 173.185(c), 173.185(f).	To modify the special permit to authorize an additional package. (modes 1, 2, 3).
20232–M	LEIDOS BIOMEDICAL RESEARCH, INC.		To modify the special permit to authorize additional origination and destination locations. (mode 1).
20493–M	TESLA, INC	172.101(j), 173.185(b)(3)(i), 173.185(b)(3)(ii).	To modify the special permit to authorize the transportation in commerce of non-wired battery modules. (mode 4).
20710–M	KERR CORPORATION	173.4a(c)(2), 173.4a(e)(2)	To modify the special permit to authorize an alternative package marking (QR Code) in lieu of requiring a copy of the special permit to accompany each shipment. (modes 1, 2, 4, 5).

[FR Doc. 2019–21890 Filed 10–7–19; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0137]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection request abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment.

PHMSA will request an extension with no change for the information collection identified by OMB control number 2137–0631, which is due to expire on March 31, 2020. A **Federal Register** notice soliciting comments on this information collection was published on July 30, 2019, (84 FR 37004). PHMSA did not receive any comments pertaining to the renewal of this information collection.

DATES: Interested persons are invited to submit comments on or before November 7, 2019.

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–366–1246, by email at *angela.hill@dot.gov,* or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

ADDRESSES: Submit comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Angela Hill at DOT, PHMSA, PHP–30, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. In accordance with this regulation, on February 11, 2019, (84 FR 3278) PHMSA published a **Federal Register** notice with a 60-day comment period soliciting comments on the information collection. In response, PHMSA received no comments.

The following information is provided for this 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. PHMSA will request a three-year term of approval for this information collection activity.

1.*Title:* Customer Notifications for Installation of Excess Flow Valves.

OMB Control Number: 2137–0631.

Current Expiration Date: 3/31/2020.

Type of Request: Renewal without change.

Abstract: This information collection will cover the reporting and recordkeeping requirements for gas pipeline operators associated with the requirement of operators to notify customers of their right to request the installation of excess flow valves.

Affected Public: Gas pipeline operators.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 4,381.

Estimated annual burden hours: 4,381.

Frequency of Collection: On occasion.

Comments to OMB are invited on:

(a) The need for the proposed information, including whether the information will have practical utility in helping the agency to achieve its pipeline safety goals;

(b) The accuracy of the agency's estimate of the burden of the proposed collection;

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

(d) Ways to minimize the burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

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 October 2, 2019, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2019–21909 Filed 10–7–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before November 7, 2019.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 2, 2019.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		SPECIAL PERMITS DATA—Granted	
4661–M	ALBEMARLE U.S. INC	180.205(b), 180.205(c), 180.205(f), 180.205(g), 180.213.	To modify the special permit to authorize additional Class 3 hazmat.
9847–M	FIBA TECHNOLOGIES, INC	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213.	To modify the special permit to authorize a ten year requalification cycle for cylinders manufactured in accordance with ISO 11120.
12382–M	AIR TRANSPORT INTERNATIONAL, INC.	172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To modify the special permit to authorize an increase in Net Explosive Weight (NEW) from 2,000 pounds to 2,400 pounds.
15507–M	YIWU JINYU MACHINERY FACTORY.	173.304(a), 173.304(d)	To modify the special permit to authorize additional hazmat and to allow an increase in burst pressures.
16532–M	EQ INDUSTRIAL SERVICES, INC.	173.185(f)(2), 173.185(f)(3)	To modify the special permit to authorize cushioning material that is not non-combustible, non-conductive and absorbent.
20274–M	BOLLORE LOGISTICS USA INC.	172.101(j), 172.300, 172.400, 173.301, 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize an additional manufacturing site for the cooling pipes.
20323–M	GENERAL DYNAMICS MISSION SYSTEMS, INC.	173.185(a)(1)(i)	To modify the special permit to authorize the transportation of prototype, and low-production lithium ion batteries contained in equipment.
20430–N	MINNESOTA COMMERCIAL RAILWAY COMPANY.	174.85	To authorize the transportation by rail of hazardous materials without the use of buffer cars.
20495–N	Tk Services Inc	173.54(a), 173.54(d)	To authorize the transportation in commerce of certain safety devices from storage facilities to facilities engaged in recycling or other disposition of the safety devices.
20709–M	DAIMLER AG	172.101(j), 173.185(a)	To modify the special permit to authorize a new battery using an identical cell manufactured in China.
20820–N	UNION TANK CAR COMPANY.	180.509(e)(4)	To authorize the inspection and testing of tank car tanks using Alternating Current Field Measurement Technique (ACFMT non-destructive test method) in lieu of the methods in 49 CFR 180.509(e)(4).
20834–N	ECC CORROSION INC	107.503(b), 107.503(c), 173.241, 173.242, 173.243, 178.345–1(d), 178.345–1(f), 178.345–2, 178.345–3, 178.345–4, 178.345–7, 180.405, 180.413.	To authorize the manufacture, marking, sale and use of non-DOT specification glass fiber reinforced plastic cargo tanks conforming with regulations applicable to DOT Specifications 407 and 412 for the transportation of hazardous materials in commerce.
20867–N	ADVANCED MATERIAL SYSTEMS CORPORATION.	172.203(a), 172.301(c), 173.302(f).	To authorize the manufacture, marking, sale and use of an ISO Standard 11119–2 cylinder, for the transportation in commerce of oxygen.
20881–N	ARKEMA INC.	172.102(c)(7)	To authorize the transportation in commerce of certain Class 3 hazardous materials in non-UN portable tanks.
20904–N	Piston Automotive, L.L.C	172.101(j)	To authorize the transportation of lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft.
20908–N	KTMI Co., Ltd.	172.203, 172.301(c), 172.704	To authorize the use of ASTM A537 Class 1 material to be used to manufacture Non-Pressure Manway Nozzles for tank cars conforming to DOT regulations and the Association of American Railroad's rules, standards and recommended practices.
20911–N	TEN-E PACKAGING SERVICES, INC.	173.308(b)	To authorize the testing of lighter designs using an alternative testing scheme.
20914–N	SILK WAY WEST AIRLINES, LLC.	172.101(j), 173.27, 175.30(a)(1).	To authorize the transportation in commerce of explosives forbidden aboard cargo-only aircraft.
20929–N	LG CHEM WROCLAW ENERGY SP Z O O.	173.185(b)(5)	To authorize the transportation of lithium batteries by air which exceed the allowable weight limit (35 kg).
20934–N	SPACE EXPLORATION TECHNOLOGIES CORP.	172.300, 172.400, 173.302(a)	To authorize the transportation in commerce of spacecraft containing krypton, compressed in non-DOT specification cylinders.
		SPECIAL PERMITS DATA—Denied	
2709–M	COPPERHEAD CHEMICAL COMPANY, INC.	173.24(c), 173.54(e), 173.62, 177.834(l)(1).	To modify the special permit to remove the temperature-control requirement for shipments.
10915–M	LUXFER INC	172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205.	To modify the special permit to authorize a change to the marking requirements of CFFC–14(b)(ii).

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20291–N	BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA.	171.2(k)	To authorize the transportation in commerce of packages of non-hazardous material identified as Category A infectious substances for purposes of shipping and packaging drills.
20854–N	MORGAN FUEL & HEATING CO., INC.	180.417(a)(3)(ii)	To authorize the transportation in commerce of MC 331 cargo tank manufactured after September 1, 1995 that is missing the cargo tank manufacturers Certificate of Compliance.
20921–N	Johnson Outdoors Gear LLC	173.304a(a)(1), 173.304a(d)(3)(ii).	To authorize the transportation in commerce of non-DOT specification receptacles meeting the requirements of SP–16060 and SP–12562.
20933–N	KANTO DENKA KOGYO CO.,LTD.		To authorize the transportation in commerce of certain Division 2.3 gases in DOT 3AA specification cylinders.
SPECIAL PERMITS DATA—Withdrawn			
20919–N	VERSUM MATERIALS, INC ..	173.338(a)	To authorize the transportation in commerce of tungsten hexafluoride in UN specification tubes.

[FR Doc. 2019–21888 Filed 10–7–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Renewal Without Change of Information Collection Requirements in Connection With the Imposition of a Special Measure Concerning Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern

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

ACTION: Notice and request for comments.

SUMMARY: As part of a continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, to information collection requirements finalized on March 19, 2007, imposing a special measure with respect to Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before December 9, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2019–0004 and the specific Office of Management and Budget (OMB) control number 1506–0045.
- Mail: Global Investigation Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2019–0004 and OMB control number 1506–0045.

Please submit comments by one method only. Comments will also be incorporated to FinCEN's retrospective regulatory review process, as mandated by E.O. 12866 and 13563. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1–800–767–2825 or 1–703–905–3591 (not a toll free number) and select option 3 for regulatory questions. Email inquiries can be sent to *FRC@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (the USA PATRIOT Act). Title III of the USA PATRIOT Act amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.[1]

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' to address the primary money laundering concern.

FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts.

b. Overview of the Current Regulatory Provisions Regarding Special Measures Concerning Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited

On March 19, 2007, FinCEN issued a final rule imposing the fifth special measure to prohibit covered financial institutions from opening or maintaining a correspondent account for, or on behalf of, Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance

[1] Therefore, references to the authority of the Secretary of the Treasury under Section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

Limited.[2] The rule further requires covered financial institutions to apply due diligence to their correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia. See 31 CFR 1010.655.

Information Collection Under the Fifth Special Measure

The notification requirement in section 1010.655(b)(2)(i)(A) is intended to aid cooperation from correspondent account holders in denying Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, access to the U.S. financial system. The information required to be maintained by section 1010.655(b)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.655.

II. Paperwork Reduction Act (PRA)

Title: Renewal of Information Collection Requirements in connection with the Imposition of a Special Measure concerning Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of Primary Money Laundering Concern.

Office of Management and Budget (OMB) Control Number: 1506–0045.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the imposition of a special measure concerning Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A. See 31 CFR 1010.655.

Type of Review: Renewal without change of a currently approved collection.

Affected Public: Businesses and certain not-for-profit institutions.

Frequency: One time notification. See 31 CFR 1010.655(b)(2)(i)(A) and 1010.655(b)(3)(i).

Estimated Number of Respondents: 23,615.[3]

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 23,615 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

When the final rule was published in March 2007, the number of financial institutions affected by the rule was estimated at 5,000. FinCEN has since revised the estimated number of affected financial institutions upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks, and recognizing that, under the final rule, covered financial institutions are required to apply due diligence to their correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia..

There are approximately 23,615 such financial institutions doing business in the United States. As noted, this revision should not have a significant impact on a substantial number of small entities.

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.

Authority: Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2019–21891 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–02–P

[2] *See* 72 FR 12730, RIN 1506–AA83

[3] The above Estimated Number of Respondents is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* web page, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary,* December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INUSRANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified,* March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook,* 2018].

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

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 Revenue Procedure 97–22, Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is

required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

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 24, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–21871 Filed 10–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5558

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 5558, Application for Extension of Time To File Certain Employee Plan Returns.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, 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 LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.vandyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File Certain Employee Plan Returns.

OMB Number: 1545–0212.

Form Number: 5558.

Abstract: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or the employee plan excise tax return (Form 5330). The data supplied on Form 5558 is used to determine if such extension of time is warranted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 466,700.

Estimated Time per Response: 24 minutes.

Estimated Total Annual Burden Hours: 183,273.

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 24, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–21867 Filed 10–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 TD 9137,

Partnership Transactions Involving Long-Term Contracts.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Partnership Transactions Involving Long-Term Contracts.

OMB Number: 1545–1732.

Regulation Project Number: TD 9137.

Abstract: The information is needed by taxpayers who assume the obligation to account for the income from long-term contracts as the result of certain nontaxable transactions.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 2 hrs.

Estimated Total Annual Reporting 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 24, 2019.

Philippe Thomas,

Supervisory Tax Analyst.

[FR Doc. 2019–21870 Filed 10–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 8619

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 Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans.

OMB Number: 1545–1341.

Abstract: This regulation implements the provisions of the Unemployment Compensation Amendments of 1992 (Pub. L. 102–318), which impose mandatory 20 percent income tax withholding upon the taxable portion of certain distributions from a qualified pension plan or a tax-sheltered annuity that can be rolled over tax-free to another eligible retirement plan unless such amounts are transferred directly to such other plan in a ''direct rollover'' transaction. These provisions also require qualified pension plans and tax-sheltered annuities to offer their participants the option to elect to make ''direct rollovers'' of their distributions and to provide distributees with a written explanation of the tax laws regarding their distributions and their option to elect such a rollover.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,423,926.

Estimated Time per Respondent: .45 minutes.

Estimated Total Annual Burden Hours: 643,369.

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 24, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–21869 Filed 10–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8288 and 8288–A

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 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests, and Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, 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 LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.Vandyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests (Form 8288) and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).

OMB Number: 1545–0902

Form Number: 8288 and 8288–A

Abstract: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Current Actions: There are no changes being made to these forms at this time. The burden estimates below do not include estimates for business or individual filers. These estimates are for all other filers only as business estimates are reported under 1545–0123 and individual estimates are reported under 1545–0074.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Form 8288:

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 17 hr., 21 min.

Estimated Total Annual Burden Hours: 174,900.

Form 8288A:

Estimated Number of Respondents: 17,500.

Estimated Time Per Respondent: 3 hr., 56 min.

Estimated Total Annual Burden Hours: 68,775.

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 24, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–21868 Filed 10–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Proposed Collection; Comment Request for Form 14693]

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 14693, Application for Reduced Rate of Withholding on Whistleblower Award Payment.

DATES: Written comments should be received on or before December 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Reduced Rate of Withholding on Whistleblower Award Payment.

OMB Number: 1545–2273.

Form Number: Form 14693.

Abstract: The Application for Reduced Rate of Withholding on Whistleblower Award Payment will be used by the whistleblower to apply for a reduction in withholding to minimize the likelihood of the IRS over withholding tax from award payments providing whistleblowers with a

preaward payment opportunity to substantiate their relevant attorney fees and court costs. The Whistleblower Office will review and evaluate the form and calculate the rate.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Annual Responses: 100.

Estimated Time per Response: 45 mins.

Estimated Total Annual Burden Hours: 75.

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: October 2, 2019.

Philippe Thomas,

Supervisory Tax Analyst.

[FR Doc. 2019–21872 Filed 10–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Legal Division Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice of members of the Legal Division Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the Legal Division PRB. The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, and other appropriate personnel actions for incumbents of SES positions in the Legal Division.

DATES: October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Brian Sonfield, Assistant General Counsel for General Law, Ethics and Regulation, Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 3000, Washington, DC 20220, Telephone: (202) 622–0283 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Composition of Legal Division PRB

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed in this notice.

The names and titles of the PRB members are as follows:

Paul Ahern, Assistant General Counsel (Enforcement & Intelligence);
Michael Briskin, Deputy Assistant General Counsel (General Law and Regulation)
Michelle Dickerman, Deputy Assistant General Counsel (Litigation, Oversight, and Financial Stability)
Eric Froman, Assistant General Counsel (Banking and Finance);
John Schorn, Chief Counsel, U.S. Mint
Anthony Gledhill, Chief Counsel, Alcohol Tobacco, Tax, and Trade Bureau;
Jimmy Kirby, Chief Counsel, Financial Crimes Enforcement Network;
Jeffrey Klein, Deputy Assistant General Counsel (International Affairs);
Carol Weiser, Benefits Tax Counsel;
Douglas Poms, International Tax Counsel;
Heather Book, Chief Counsel, Bureau of Engraving and Printing;
Brian Sonfield, Assistant General Counsel (General Law, Ethics and Regulation);
Charles Steele, Chief Counsel, Office of Foreign Assets Control;
David Sullivan, Assistant General Counsel (International Affairs);
Drita Tonuzi, Deputy Chief Counsel (Operations), Internal Revenue Service;
Heather Trew, Deputy Assistant General Counsel (Enforcement & Intelligence);
Krishna Vallabhaneni, Tax Legislative Counsel and;
Paul Wolfteich, Chief Counsel, Bureau of the Fiscal Service.

(Authority 5 U.S.C. 4314(c)(4)).

Brian R. Callanan,

General Counsel.

[FR Doc. 2019–21910 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Public Meeting of the Commission on Social Impact Partnerships

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Commission on Social Impact Partnerships (''Commission'') will convene for a public meeting on Monday, October 28, 2019, via teleconference from 1:00 p.m.–4:00 p.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Monday, October 28, 2019, via teleconference from 1:00 p.m.–4:00 p.m. Eastern Time.

ADDRESSES: The public can attend remotely via teleconference. Treasury expects to make the teleconference details available on the Social Impact Partnerships to Pay for Results Act (''SIPPRA'') website (*treasury.gov/sippra*). Members of the public who would like to attend the meeting may visit the SIPPRA website or send an email to Elizabeth Sawyer (*elizabeth.sawyer@treasury.gov*) by 5:00 p.m. Eastern Time on Wednesday, October 23, 2019 containing each proposed attendee's email address and full name (first, middle, and last). Ms. Sawyer will provide the teleconference details to each interested attendee via email. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Marcia Small Bowman, Office of Civil Rights and Diversity, Department of the Treasury, at 202–622–8177 or *marcia.smallbowman@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Holly Posin, the Designated Federal Officer (''DFO'') for the Commission, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20020; via phone/voice mail at: (202) 622–3282; via fax at: (202) 622–2633; or via email at: *holly.posin2@treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On February 9, 2018, the President signed the Bipartisan Budget Act of 2018, establishing the Commission under SIPPRA. The Commission's duties

include making recommendations to Treasury on whether to fund social impact partnership grant applications. The Commission consists of nine members. Eight members are appointed by congressional leadership, and the ninth member is appointed by the President. The President's appointee serves as the Chair of the Commission. In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations thereunder, Holly Posin, DFO of the Commission, has ordered publication of this notice that the Commission will convene a meeting on October 28, 2019, via a telephone conference, 1:00 p.m.–4:00 p.m. Eastern Time. During this meeting, the Commission will discuss applications submitted to Treasury in response to the SIPPRA Notice of Funding Availability that Treasury published in the **Federal Register** on February 21, 2019. Treasury expects to make all documents discussed by the Commission available for public inspection and photocopying in Treasury's library in advance of the meeting. Treasury expects the Commission to make funding recommendations to Treasury at this meeting.

Submission of Written Statements: The public is invited to submit written statements to the Commission. Written statements should be sent by any one of the following methods:

Electronic Statements

Email: *SIPPRA@treasury.gov, Attn:* Holly Posin, Docket ID No. 03282019.

Paper Statements

Send paper statements to SIPPRA Commission, Attn: Holly Posin, Docket ID No. 03282019, U.S. Department of the Treasury, Main Treasury Building, Room 3127, 1500 Pennsylvania Avenue NW, Washington DC 20220. In general, Treasury will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and photocopying in Treasury's library located at Treasury Department Annex, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The library is open on official business days between the hours of 10:00 a.m. and 4:30 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

Dated: October 1, 2019.

Michael Faulkender,

Assistant Secretary for Economic Policy.

[FR Doc. 2019–21912 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning October 1, 2019, and ending on December 31, 2019, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 2.04 per centum per annum.

DATES: Rates are applicable October 1, 2019 to December 31, 2019.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: *http://www.treasury.gov* or *http://www.federalregister.gov*.

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

Gary Grippo,

Deputy Assistant Secretary for Public Finance.

[FR Doc. 2019–21913 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee; Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee October 15, 2019, public meeting.

The United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 15, 2019.

Date: October 15, 2019.

Time: 9:30 a.m. to 3:15 p.m.

Location: 2nd Floor Conference Room A&B, United States Mint, 801 9th Street NW, Washington, DC 20220.

Subject: Review and discussion of candidate designs for the 2021 American Liberty High Relief 24-karat Gold Coin and Silver Medal; 2021 and beyond Washington Crossing the Delaware Quarter-Dollar design; 2021 Navy Military 2.5 oz. Silver Medal; and the 2020 Woman's Suffrage Centennial Silver Medal.

Interested members of the public may either attend the meeting in person or dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov*.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations

with respect to the mintage level for any commemorative coin recommended.

Members of the public interested in attending the meeting in person will be admitted into the meeting room on a first-come, first-serve basis as space is limited. Conference Room A&B can accommodate up to 50 members of the public at any one time. In addition, all persons entering a United States Mint facility must adhere to building security protocol. This means they must consent to the search of their persons and objects in their possession while on government grounds and when they enter and leave the facility, and are prohibited from bringing into the facility weapons of any type, illegal drugs, drug paraphernalia, or contraband.

The United States Mint Police Officer conducting the screening will evaluate whether an item may enter into or exit from a facility based upon Federal law, Treasury policy, United States Mint policy, and local operating procedure; and all prohibited and unauthorized items will be subject to confiscation and disposal.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C)).

David J. Ryder,

Director, United States Mint.

[FR Doc. 2019–21930 Filed 10–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Pricing for 2019 United States Mint Numismatic Product

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for a new United States Mint numismatic product in accordance with the table below:

Product	2019 Retail Price
2019 American Innovation™ $1 Coin Proof Set	$20.95

FOR FURTHER INFORMATION CONTACT: Katrina McDow, Marketing Specialist, Sales and Marketing; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–8495.

Authority: 31 U.S.C. 5111, 5112, 5132 & 9701.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2019–21928 Filed 10–7–19; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Pricing for 2019 United States Mint Numismatic Product

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

The United States Mint is announcing pricing for a new United States Mint numismatic product in accordance with the table below:

Product	2019 retail price
American Eagle One Ounce Silver Enhanced Reverse Proof Coin (S)	$65.95

FOR FURTHER INFORMATION CONTACT: Derrick Griffin, Marketing Specialist, Sales and Marketing; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7579.

Authority: 31 U.S.C. 5111, 5112, 5132 & 9701.

Dated: October 1, 2019.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2019–21929 Filed 10–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Agency Information Collection Activity: Application for Refund of Educational Contributions

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 9, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0261'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 94–502 and Chapter 32, title 38 U.S.C.

Title: Application for Refund of Educational Contributions (VA Form 22–5281).

OMB Control Number: 2900–0261.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans and Servicemembers complete VA Form 22–5281 to request a refund of their contributions to the Post-Vietnam Veterans Education Program. Contributions made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be

refunded on the date of the participant's discharge or release from active duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty, contributions will be refunded within 60 days of the receipt of their application.

Affected Public: Individuals or households.

Estimated Annual Burden: 11 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 67.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk Department of Veterans Affairs.

[FR Doc. 2019–21931 Filed 10–7–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,
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Part II

Postal Regulatory Commission

39 CFR Chapter III
Reorganization of Postal Regulatory Commission Rules; Proposed Rule

POSTAL REGULATORY COMMISSION

39 CFR Chapter III

[Docket No. RM2019–13; Order No. 5229]

Reorganization of Postal Regulatory Commission Rules

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is initiating a proposed rulemaking docket in order to propose amendments that reorganize the order of appearance of its regulations and revise multiple sections therein. This notice informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 1, 2019. *Reply Comments are due:* November 15, 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

Pursuant to 39 U.S.C. 503, the Commission establishes this notice of proposed rulemaking to propose amendments that reorganize the order of appearance of its regulations in chapter III of title 39 of the Code of Federal Regulations. This rulemaking also proposes to substantially revise the Commission's Rules of General Applicability appearing in 39 CFR part 3001 (Rules of Practice and Procedure), subpart A.

The reorganization of the Commission's regulations within 39 CFR chapter III begins with the addition of subchapter headings, which allows for the orderly organization of the material currently appearing therein. Related material is included under each subchapter with the ordering of subchapters progressing from more general information that may be of interest to the widest audience, to very specific information that will only be of interest to particular persons. Except for the material currently appearing in 39 CFR part 3001, subpart A, no significant revisions are made to the existing material. However, the revision of all section numbers requires the updating of all cross-references that appear within each section. The proposed organization of 39 CFR chapter III is fully discussed in section III of this notice of proposed rulemaking.

This rulemaking also proposes revisions to the Rules of Practice and Procedure appearing in 39 CFR part 3001. This part currently contains two subparts: 39 CFR part 3001, subpart A, Rules of General Applicability, and 39 CFR part 3001, subpart D, Rules Applicable to Requests for Changes in the Nature of Postal Services. The revisions to 39 CFR part 3001, subpart A are substantial. Current 39 CFR part 3001, subpart D is moved to a new stand-alone part (proposed 39 CFR part 3020) without revision.

The material in 39 CFR part 3001, subpart A is revised from its original purpose of being applicable to hearing on the record type proceedings to being generally applicable to all proceeding types that come before the Commission. This is representative of the Commission's changing role under the Postal Accountability and Enhancement Act (PAEA) of 2006, from predominately administering hearings on the record, to predominately administering notice and comment type proceedings. The proposed revisions separate out all generally applicable rules from current 39 CFR part 3001, subpart A and present that material first. The remaining material, only applicable to hearing on the record proceedings, is placed in a single subpart that appears last. The proposed revisions to, and organization of, current 39 CFR part 3001, subpart A (proposed 39 CFR part 3010), is fully discussed in section IV of this notice of proposed rulemaking.

The proposed reorganization of the Commission's regulations will accommodate the changes to the rules of practice and facilitate the easy location of relevant regulations. The proposed amendments to the rules of practice will improve the ability of persons appearing before the Commission to participate in Commission proceedings. The proposed rules appear after the signature of this notice of proposed rulemaking.

II. Background

A. The Original Rules of Practice

Shortly after its creation in 1970, the Postal Rate Commission [1] adopted rules governing practice before the Commission (39 CFR part 3001).[2] Those rules applied to both trial-type hearings, referred to as hearings on the record, and to rulemaking proceedings in which the Commission based its decisions on comments solicited by means of public notices.

Of the five subparts in original 39 CFR part 3001, the first subpart provided rules of general applicability (39 CFR part 3001, subpart A). Of the generally applicable rules, most were written with a focus on trial-type hearings.[3] Only one rule, § 3001.41, expressly addressed procedures for rulemaking proceedings.

The remaining four subparts dealt with the conduct of proceedings that require a hearing on the record. This reflects the fact that most Commission responsibilities under the PRA required trial-type proceedings.

- Subpart B, Rules Applicable to Requests for Changes in Rates or Fees, applied to Postal Service proposals to change rates or fees pursuant to 39 U.S.C. 3622 of the PRA. A hearing on the record was required by 39 U.S.C. 3624(a).
- Subpart C, Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule, applied to Postal Service proposals to

[1] The Postal Rate Commission was created by the Postal Reorganization Act of 1970, Public Law 91–375, 84 Stat. 719 (1970) (PRA). In 2006, the agency's name was changed to the Postal Regulatory Commission by the PAEA, Public Law 109–435, 120 Stat. 3198 (2006). The term ''Commission'' will be used herein to refer to either the Postal Rate Commission or the Postal Regulatory Commission as the context requires.

[2] The Commission's original rules of practice were adopted in January 1971. Postal Rate Commission, Rules of Practice and Procedure, 36 FR 396 (January 12, 1971).

[3] *See id.* at 396–406; § 3001.7 (Ex parte communications); § 3001.8 (No participation by investigative or prosecuting officers); § 3001.17 (Notice of proceeding); § 3001.19 (Notice of prehearing conference or hearing); § 3001.20 (Formal interventions); § 3001.25 (Interrogatories for purpose of discovery); § 3001.26 (Requests for production of documents or thigs for purpose of discovery); § 3001.27 (Requests for admissions for purpose of discovery); § 3001.28 (Failure to comply with orders for discovery); § 3001.30 (Hearings); § 3001.31 (Evidence); § 3001.33 (Depositions); § 3001.34 (Briefs); § 3001.35 (Proposed findings and conclusions); § 3001.36 (Oral argument before the presiding or other designated official); § 3001.37 (Oral argument before the Commission); § 3001.38 (Omission of the intermediate decision); § 3001.39 (Intermediate decisions); and § 3001.40 (Exceptions to intermediate decisions). A few rules applied to both hearings on the record and rulemaking proceedings. *See, e.g.,* § 3001.9 (Filing of documents); § 3001.10 (Form and number of copies of documents; § 3001.11 (General contents of documents).

establish and make changes to the Mail Classification Schedule pursuant to 39 U.S.C. 3623 of the PRA. A hearing on the record was required by 39 U.S.C. 3624(a).

- Subpart D, Rules Applicable to Requests for Changes in the Nature or Postal Services, applied to Postal Service proposals to make changes in the nature of postal services pursuant to 39 U.S.C. 3661 of the PRA. A hearing on the record was required by 39 U.S.C. 3661(b).
- Subpart E, Rules Applicable to Rate and Service Complaints, applied to rate and service complaints by interested persons pursuant to 39 U.S.C. 3662 of the PRA. A hearing on the record was required by 39 U.S.C. 3662 and 3624.

B. Additions to the Original Rules of Practice

In the years following adoption of the original rules of practice, the Commission added several new subparts to 39 CFR part 3001 that either supplemented the original rules or adopted procedural rules applicable to additional regulatory responsibilities.

- 39 CFR part 3001, subpart F, Rules Applicable to the Filing of Testimony by Intervenors, applied to the filing of testimony by intervenors in rate and mail classification proceedings conducted as hearings on the record under 39 CFR part 3001, subparts B and C. 38 FR 7536 (March 22, 1973).
- 39 CFR part 3001, subpart G, Rules Applicable to the Filing of Periodic Reports by the United States Postal Service, established rules governing the filing by the Postal Service of periodic reports with the Commission. 41 FR 47438 (October 29, 1976).
- 39 CFR part 3001, subpart H, Rules Applicable to the Appeals of Postal Service Determinations to Close or Consolidate Post Offices, contained new rules governing appeals to the Commission of Postal Service decisions to close or consolidate post offices. 42 FR 10989 (February 25, 1977). These appeals required an administrative review of a Postal Service record. The review is conducted similar to a notice and comment procedure. Accordingly, the only generally applicable rules of practice in 39 CFR part 3001, subpart A that applied to 39 CFR part 3001, subpart H proceedings were those that did not relate solely to evidentiary hearings on the record.
- 39 CFR part 3001, subparts I, J, and K (Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes, Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration, and Rules for the use of Multi-Year Test Periods, respectively) were added to the rules of practice and established additional procedures applicable to mail classification hearings on the record. 61 FR 24447 (May 15, 1996).
- 39 CFR part 3001, subpart L, Rules Applicable to Negotiated Service Agreements, governed review of negotiated service agreements proposed by the Postal Service and provided for on the record proceedings that could include trial-type hearings. 69 FR 7574 (February 18, 2004).

Following these additions, the Commission's rules of practice fell into six major categories (sometimes with significant overlap). The rules did not appear in any particular order. Most rules placed some reliance on 39 CFR part 3001, subpart A, Rules of General Applicability. All of these rules were included in 39 CFR part 3001, Rules of Practice and Procedure.

- Rules Governing Rate Cases: 39 CFR part 3001, subpart B, Rules Applicable to Requests for Changes in Rates or Fees; and 39 CFR part 3001, subpart F, Rules Applicable to the Filing of Testimony by Intervenors.
- Rules Governing Mail Classification Cases: 39 CFR part 3001, subpart C, Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule; 39 CFR part 3001, subpart F, Rules Applicable to the Filing of Testimony by Intervenors; 39 CFR part 3001, subpart I, Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes; 39 CFR part 3001, subpart J, Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration; 39 CFR part 3001, subpart K, Rules for Use of Multi-Year Test Periods; and 39 CFR part 3001, subpart L, Rules Applicable to Negotiated Service Agreements.
- Rules Governing Nature of Service Cases: 39 CFR part 3001, subpart D, Rules Applicable to Requests for Changes in the Nature of Postal Services.
- Rules Governing Complaint Cases: 39 CFR part 3001, subpart E, Rules Applicable to Rate and Service Complaints.
- Rules Governing Post Office Closing and Consolidation Cases: 39 CFR part 3001, subpart H, Rules Applicable to Appeals of Postal Service Determinations to Close or Consolidate Post Offices.
- Rules Governing Periodic Reports: 39 CFR part 3001, subpart G, Rules Applicable to the Filing of Periodic Reports by the U.S. Postal Service.

C. Changes to the Rules of Practice Following Enactment of the PAEA

In its 2006 enactment of the PAEA, Congress made significant changes to the regulatory framework within which the Commission exercised oversight of the Postal Service's rates and services. The PAEA established two types of products, market dominant products as to which the Postal Service enjoys a statutory or effective monopoly and competitive products as to which the Postal Service faces direct competition from other carriers. *See* 39 U.S.C. 3621 and 3631. Separate processes were prescribed for the pricing of the two groups of products. *See* 39 U.S.C. 3622 and 3633.

The PAEA also streamlined the process for the approval of price increases by replacing the requirement for trial-type, hearings on the record, with notice and comment procedures closely analogous to informal rulemaking proceedings. In the case of market dominant products, a CPI-indexed price cap was imposed with proposed rate increases that were subject to accelerated Commission review. Although competitive products were not subject to a price cap, proposed price changes were subject to accelerated review by the Commission.

These changes in the regulatory pricing regimes for market dominant and competitive products required significant changes in the Commission's regulations, including the Commission's rules of practice. To implement the market dominant pricing regime, the Commission adopted a new 39 CFR part 3010 to its regulations.[4] To implement the competitive pricing regime, the Commission adopted a new 39 CFR part 3015. Order No. 43 at 135–138. The addition of these two new parts resulted in the subsequent removal of 39 CFR part 3001, subparts B, F, and L from the Commission's rules of practice.[5]

The PAEA also provided mechanisms for changing the market dominant and competitive product lists. 39 U.S.C 3642. To implement 39 U.S.C. 3642, the Commission adopted a new 39 CFR part 3020 to its regulations. Order No. 43 at 138–155. The Commission subsequently adopted a new 39 CFR part 3035 governing market tests of experimental products pursuant to 39 U.S.C. 3641. The enactment of 39 U.S.C. 3642 and 3641 and the adoption by the

[4] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 111–134 (Order No. 43).

[5] Docket No. RM2009–4, Order Eliminating Obsolete Rules of Practice, May 11, 2009 (Order No. 214).

Commission of 39 CFR parts 3020 and 3035 rendered 39 CFR part 3001, subparts C, I, J, and K unnecessary and resulted in their removal from the rules of practice. Order No. 214 at 6.

Other sections of the PAEA also resulted in the removal of subparts from 39 CFR part 3001 of the rules of practice and their replacement by new parts in title 39 of the Code of Federal Regulations. For example, new statutory reporting requirements were added in 39 U.S.C. 3651 through 3654. The Commission responded to these new statutory requirements by eliminating 39 CFR part 3001, subpart G from the rules of practice and by adding a new 39 CFR part 3050. *Id.* at 4. Similarly, with the PAEA's enactment of 39 U.S.C. 3662 authorizing the filing of complaints, the Commission eliminated 39 CFR part 3001, subpart E from the rules of practice and the adoption of a new 39 CFR part 3030.[6]

Finally, on January 25, 2012, the Commission adopted revised rules governing appeals of post office closings and consolidations. As part of this revision, the Commission repealed 39 CFR part 3001, subpart H of the rules of practice and established a new 39 CFR part 3025.[7]

The result of the foregoing changes has been to leave the rules of practice in 39 CFR part 3001 with only two subparts: 39 CFR part 3001, subpart A, Rules of General Applicability, and 39 CFR part 3001, subpart D, Rules Applicable to Requests for Changes in the Nature of Postal Services. Subpart A of 39 CFR part 3001 contains general rules, and subpart D of 39 CFR part 3001, contains rules specific to only one proceeding type.

The PAEA also required additional regulations that did not involve the removal of subparts from 39 CFR part 3001. In addition, the Commission added regulations to address other issues that arose from time to time. The following parts were added to chapter III of this title to address the above: Procedures for Compelling Production of Information by the Postal Service (39 CFR part 3005); Non-public Materials Provided to the Commission (39 CFR part 3007); Ex Parte Communications (39 CFR part 3008); Procedures Related to Commission Views (39 CFR part 3017); Rules for Rate or Service Inquiries (39 CFR part 3031); Special Rules for Complaints Alleging Violations of 39 U.S.C. 404a (39 CFR part 3032); Service Performance and Customer Satisfaction Reporting (39 CFR part 3055); and Accounting Practices and Tax Rules for the Theoretical Competitive Products Enterprise (39 CFR part 3060). These parts were added to 39 CFR chapter III with no particular organization in mind.

Thus, the material in chapter III of this title is not presented in any logical order or with any particular grouping of similar materials for ease of use. The Rules of Practice and Procedure (39 CFR part 3001) contain both general information, and unrelated information specific to only one proceeding type. Furthermore, the general information in 39 CFR part 3001 was originally written to address the needs of hearings on the record, when the current focus of Commission practice is on notice and comment proceedings. This rulemaking proposes to address these issues.

When adopted, the proposed amendments to the rules of practice will foster the efficient disposition of matters that come before the Commission, and will enhance the ability of persons appearing before the Commission to participate efficiently and effectively in Commission proceedings. The reorganization of the Commission's remaining regulations makes no changes to the substance of those regulations and is proposed to accommodate changes to the rules of practice and to facilitate the location of relevant regulations.

III. Organization of Chapter III, the Postal Regulatory Commission

A. General Reorganization

This rulemaking proposes to organize the material currently appearing in chapter III of this title, by grouping related material (individual parts of the current regulations) under six new subchapter headings. The new subchapter headings proposed for chapter III of this title are shown in Table III–1.

TABLE III–1—SUBCHAPTER ORGANIZATION

Chapter III—Postal Regulatory Commission	
Subchapter	Title
Subchapter A	The Commission.
Subchapter B	Seeking Information from the Commission.
Subchapter C	General Rules of Practice for Proceedings Before the Commission.
Subchapter D	Special Rules of Practice for Specific Proceeding Types.
Subchapter E	Regulations Governing Market Dominant Products, Competitive Products, Product Lists, and Market Tests.
Subchapter F	Periodic Reporting, Accounting Practices, and Tax Rules.

The proposed organization of chapter III is facilitated by the use of subchapter headings that are indicative of the material included in those subchapters. The order of the subchapters, and the material appearing within, is carefully selected to provide the most general material first, which likely will be of interest to the widest audience. These subchapters are followed by increasingly detailed material, which is likely to be of interest to a more limited audience.

This organization seeks to provide interested persons with an easily accessible overview of the Commission, an understanding of how to obtain information from the Commission (such as through Freedom of Information Act (FOIA) requests) and the ability to participate in the most common type of Commission proceeding (the notice and comment proceeding) without the need to be burdened with the more detailed information that appears at the end of the chapter. This addresses the needs of many participants who interact with the Commission on a regular basis in a way that is also understandable to those who interact on a less frequent basis.

The organization also facilitates and is consistent with the proposed revision of current 39 CFR part 3001, Rules of Practice and Procedure. This part is currently subdivided into two subparts each containing unrelated material (39 CFR part 3001, subparts A and D). This material will be divided among three new parts in 39 CFR chapter III.

[6] Docket No. RM2008–3, Order Establishing Rules for Complaints and Rate of Service Inquiries, March 24, 2009 (Order No. 195).

[7] Docket No. RM2011–13, Order Adopting Final Rules Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, January 25, 2012, at 12 (Order No. 1171).

The revision of current 39 CFR part 3001 focuses on 39 CFR part 3001, subpart A, Rules of General Applicability. When originally written, this subpart predominately concerned hearing on the record type proceedings. Over the years, these rules have been adapted to other proceeding types, but retained many subtle references to hearing on the record proceedings.[8] The proposed revisions generalize the rules of general applicability such that they may be applied to most, if not all, proceeding types. This revised material appears as proposed 39 CFR part 3010, Rules of Practice and Procedure.

The remaining material in 39 CFR part 3001, subpart D, Rules Applicable to Requests for Changes in the Nature of Postal Services, remains unchanged. This material is moved to proposed 39 CFR part 3020, Rules Applicable to Requests for Changes in the Nature of Postal Services.

In the organization of 39 CFR chapter III, the generally applicable rules of practice and procedure logically will be located before the more detailed rules that reference the general rules. The Commission is aware that many of the specific rules currently contain material that are repetitive of the general rules. In the future, the specific rules will be edited to remove any repetitive material that may appear within.[9]

Finally, the organization of 39 CFR chapter III is developed with the potential for future revisions to the chapter in mind. Along with placing subchapters in a logical order, the section numbering is chosen to allow for new material to be added without causing a significant disruption in the organization of the chapter.

Except for the rules of practice and procedure proposed for 39 CFR part 3010 (current 39 CFR part 3001, subpart A), the substance of rules in chapter III of this title remains essentially unchanged. The areas that arguably contain substantive changes are noted in this rulemaking as appropriate. The reorganization of the various parts of chapter III of this title requires the updating of all cross references within the rules. Furthermore, except for quoted material, all gender specific terms are eliminated (he/she, him/her, etc.).[10] Finally, every attempt is made to avoid duplication of current and proposed section numbers to eliminate potential issues with future citing to the correct rules.

B. Subchapter A—The Commission

The rules describing the Commission and its offices, and employee standards of conduct, appear under 39 CFR chapter III, subchapter A and is titled ''The Commission.'' These rules focus on the organization of the Commission and certain ethical standards applicable to its employees. Cross references that refer to rules outside of the rules proposed for 39 CFR chapter III, subchapter A are updated. With one exception, changes have not been made to the substance of any rule.[11] The proposed organization for 39 CFR chapter III, subchapter A is shown in Table III–2.

TABLE III–2—SUBCHAPTER A—THE COMMISSION

Subchapter A—The Commission		
Proposed part No.	Part name	Current part No.
3000	Proposed name: The Commission and its offices	3002
	Current name: Organization	
3001	Proposed name: Standard of conduct	3000
	Current name: Employee standards of conduct	

C. Subchapter B—Seeking Information from the Commission

The rules applicable to the privacy act, public records and FOIA, and public attendance at Commission meetings appear under 39 CFR chapter III, subchapter B, and is titled ''Seeking Information from the Commission.'' These rules focus on obtaining information from the Commission that is not necessarily associated with any one matter before the Commission. Cross references that refer to rules outside of the rules proposed for 39 CFR chapter III, subchapter A and internal cross referencing are updated. With one exception, changes have not been made to the substance of any rule.[12] The proposed organization for 39 CFR chapter III, subchapter B is shown in Table III–3.

TABLE III–3—SUBCHAPTER B—SEEKING INFORMATION FROM THE COMMISSION

Subchapter B—Seeking information from the Commission		
Proposed part No.	Part name	Current part No.
3005	Privacy act rules	3003
3006	Public records and freedom of information act	3004
3007	Public attendance at Commission meetings	3001.43

[8] Totally unrelated material concerning public attendance at Commission meetings was also added to this subpart. Most of this material is moved to proposed 39 CFR part 3007.

[9] At this point, the Commission is not proposing to immediately edit material appearing in proposed 39 CFR chapter III, subchapters D or E to remove duplicative material. The intent is to do this in the future as potential changes are made to the affected regulations.

[10] The term ''Chairman'' is retained. It is left to the discretion of the person holding office whether to be referred to as Chairman, Chairwoman, Chairperson, or Chair.

[11] Section 3000.102(b), which references public participation in matters before the Commission, has been edited to remove a reference to ''limited participation.'' As discussed below, this form of participation has been removed from the rules of practice and procedure.

[12] The definition for ''Commission meeting'' previously appearing at § 3001.5(n) is moved to proposed § 3007.100(a) of this chapter.

D. Subchapter C—General Rules of Practice for Proceedings Before the Commission

The rules specifying the general practice and procedure of docketed matters before the Commission, non-public materials provided to the Commission, ex parte communications, and procedures for compelling production of information by the Postal Service appear under 39 CFR chapter III, subchapter C and is titled ''General Rules of Practice for Proceedings Before the Commission.'' These are the core rules for practicing before the Commission, which are generally referenced by many of the other rules that follow. The rules appearing in proposed 39 CFR part 3010 are derived from the current rules appearing at 39 CFR part 3001, subpart A. They should be considered new material and are discussed separately in this rulemaking. For all other parts appearing under 39 CFR chapter III, subchapter C cross references that refer to rules outside of the rules proposed for 39 CFR chapter III, subchapter C and internal cross referencing are updated. Changes have not been made to the substance of any of these rules. The proposed organization for 39 CFR chapter III, subchapter C is shown in Table III–4.

TABLE III–4—SUBCHAPTER C—GENERAL RULES OF PRACTICE FOR PROCEEDINGS BEFORE THE COMMISSION

Subchapter A—general rules of practice for proceedings before the Commission		
Proposed part No.	Part name	Current part No.
3010	Proposed name: Rules of practice and procedure Current name: Rules of practice and procedure, subpart A	3001
3011	Non-public materials provided to the Commission	3007
3012	Ex parte communications	3008
3013	Procedures for compelling production of information by the Postal Service	3005

E. Subchapter D—Special Rules of Practice for Specific Proceeding Types

The rules applicable to requests for changes in the nature of postal services, appeals of Postal Service determinations to close or consolidate post offices, complaints, rate or service inquiries, complaints alleging violations of 39 U.S.C. 404a, and Commission views appear under 39 CFR chapter III, subchapter D, and is titled ''Special Rules of Practice for Specific Proceeding Types.'' Most of these rules rely on the general rules appearing in 39 CFR chapter III, subchapter C. However, they provide more detail addressing specific docket types. Cross references that refer to rules outside of the rules proposed for 39 CFR chapter III, subchapter D and internal cross referencing are updated. Changes have not been made to the substance of any rule. The proposed organization for 39 CFR chapter III, subchapter D is shown in Table III–5.

TABLE III–5—SUBCHAPTER D—SPECIAL RULES OF PRACTICE FOR SPECIFIC PROCEEDING TYPES

Subchapter D—special rules of practice for specific proceeding types		
Proposed part No.	Part name	Current part No.
Proposed Part Number.	Part Name	Current Part Number
3020	Proposed new name: Rules applicable to requests for changes in the nature of postal services Current Name: Rules of practice and procedure, subpart D	3001
3021	Rules for appeals of Postal Service determinations to close or consolidate post offices	3025
3022	Rules for complaints	3030
3023	Rules for rate or service inquiries	3031
3024	Special rules for complaints alleging violations of 39 U.S.C. 404a	3032
3025	Procedures related to Commission views	3017

F. Subchapter E—Regulations Governing Market Dominant Products, Competitive Products, Product Lists, and Market Tests

The rules for regulating market dominant products, competitive products, market tests of experimental products, and the associated product lists appear under 39 CFR chapter III, subchapter E, and is titled ''Regulations Governing Market Dominant Products, Competitive Products, Product Lists, and Market Tests.'' Changes have not been made to the substance of any rule. Cross references that refer to rules outside of the rules proposed for 39 CFR chapter III, subchapter E and internal cross referencing are updated. The proposed organization for 39 CFR chapter III, subchapter E is shown in Table III–6.

TABLE III–6—SUBCHAPTER E—REGULATIONS GOVERNING MARKET DOMINANT PRODUCTS, COMPETITIVE PRODUCTS, PRODUCT LISTS, AND MARKET TESTS

Subchapter E—regulations governing market dominant products, competitive products, product lists, and market tests		
Proposed part No.	Part name	Current part No.
3030	Regulation of rates for market dominant products	3010
3035	Regulation of rates for competitive products	3015

TABLE III–6—SUBCHAPTER E—REGULATIONS GOVERNING MARKET DOMINANT PRODUCTS, COMPETITIVE PRODUCTS, PRODUCT LISTS, AND MARKET TESTS—Continued

Subchapter E—regulations governing market dominant products, competitive products, product lists, and market tests		
Proposed part No.	Part name	Current part No.
3040	Product lists	3020
3045	Rules for market tests of experimental products	3035

Consideration is currently being given, in Docket No. RM2017–3, to revising the rules applicable to the regulation of rates for market dominant products appearing in proposed 39 CFR part 3030 (current 39 CFR part 3010).[13] The instant rulemaking proposes to move the current market dominant rules from 39 CFR part 3010 to part 39 CFR 3030, and to add ''.500'' to each section number. This allows for any rules proposed in Docket No. RM2017–3 to be located in the range of § 3030.100 through § 3030.499. Upon adoption of new rules from § 3030.100 through § 3030.499, the current rules (being re-designated by this rulemaking as §§ 3030.500 *et seq.*) will be deleted.[14]

Appendices A and B to proposed 39 CFR part 3040 contain the market dominant and competitive product lists. The most up to date version of the product lists will be included in the final order assuming the proposals of this rulemaking are adopted.

G. Subchapter F—Periodic Reporting, Accounting Practices, and Tax Rules

The rules for periodic reporting, service performance and customer satisfaction reporting, and accounting practices and tax rules for the theoretical competitive products enterprise appear under 39 CFR chapter III, subchapter F, and is titled ''Periodic Reporting, Accounting Practices, and Tax Rules.'' These rules focus on reports provided to the Commission by the Postal Service. There are only two instances in which persons other than the Commission or the Postal Service reference these rules. First, the periodic reporting rules allow persons, including the Commission and the Postal Service, to propose changes to the accepted analytical principles applied in the Postal Service's annual periodic reports. *See* § 3050.11. Proceedings to consider such proposals are administered as notice and comment proceedings, with additional provisions for discovery. Second, the accounting practices and tax rules allow for comments.[15] No changes have been made to the substance or numbering of these rules. Cross references that refer to rules outside of the rules proposed for 39 CFR chapter III, subchapter F are updated. The proposed organization for 39 CFR chapter III, subchapter F is shown in Table III–7.

TABLE III–7—SUBCHAPTER F—PERIODIC REPORTING, ACCOUNTING PRACTICES, AND TAX RULES

Subchapter F—periodic reporting, accounting practices, and tax rules		
Proposed part No.	Part name	Current part No.
3050	Periodic reporting	3050
3055	Service performance and customer satisfaction reporting	3055
3060	Accounting practices and tax rules for the theoretical competitive products enterprise	3060

IV. Part 3010, Rules of Practice and Procedure

A. General Organization

This rulemaking also proposes to revise the material currently appearing in the 39 CFR part 3001, subpart A, Rules of General Applicability. The majority of this material is revised and moved to proposed 39 CFR part 3010, and is titled ''Rules of Practice and Procedure.'' [16]

The revisions are made to present the rules of practice and procedure in an understandable, logical format. There is no intent to change the way participants currently interact with the Commission. Any area that arguably changes the way participants interact with the Commission and/or otherwise streamlines and makes less cumbersome any interaction with the Commission is noted in this rulemaking as appropriate.

Practice before the Commission generally falls within three areas: Hearings on the record, notice and comment proceedings, and administrative review. Prior to enactment of the PAEA, the most significant practice before the Commission were omnibus rate cases, complaint proceedings, and changes to the nature of postal services, which all required hearings on the record. Thus, the majority of the 39 CFR part 3001, subpart A, Rules of General Applicability, were developed to administer this proceeding type. Only one rule, current § 3001.41, Rulemaking proceedings, is specifically devoted to notice and comment type proceedings. Administrative review type proceedings were handled separately in current 39 CFR part 3025, rules for appeals of Postal Service determinations to close or consolidate post offices.[17] Both notice and comment rulemakings and administrative review proceedings cite

[13] Docket No. RM2017–3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

[14] The assumption is that the instant rulemaking will be completed prior to the changes proposed in Docket No. RM2017–3 going into effect.

[15] *See* current § 3060.42(a). No comments have been filed over the past five years.

[16] Certain material unrelated to the rules of practice and procedure is moved to other parts of chapter III. Specifically, current § 3001.43, Public attendance at Commission meetings is moved to proposed 39 CFR part 3007, public attendance at Commission meetings, and the definition for ''Commission meeting'' previously appearing at § 3001.5(n) is moved to proposed § 3007.100(a) of this chapter. Also 39 CFR part 3001, subpart D, Rules Applicable to Requests for Changes in the Nature of Postal Services, is moved to proposed 39 CFR part 3020.

[17] There has been no change to the requirement for the Commission to conduct administrative hearings for appeals of Postal Service determinations to close or consolidate post offices.

to or adopt portions of the rules of general applicability where necessary.

Under the PAEA, the majority of proceedings before the Commission are handled consistent with notice and comment rulemakings. Omnibus rate proceedings are no longer required. Complaints may still be formally adjudicated, but a hearing on the record is no longer required. Only changes to the nature of postal services still require a hearing on the record. Thus, the focus of practice before the Commission has changed from predominantly hearing on the record type proceedings to predominantly notice and comment type proceedings.

This change in Commission focus drives the organization of the proposed rules of practice and procedure. The proposed rules are organized into six subparts. Rules that are generally applicable to all proceeding types appear first in proposed 39 CFR part 3010, subpart A, General Provisions. The filing requirements of proposed 39 CFR part 3010, subpart B are also generally applicable to all proceeding types. The ability to participate in proceedings before the Commission for the three general types of proceedings described above appear in proposed 39 CFR part 3010, subpart C, Participation in Commission Proceedings. Proposed 39 CFR part 3010, subpart D describes notices, motions, and information requests. These pleading types are generally applicable to all proceeding types before the Commission.

The last two subparts provide more specific information applicable to notice and comment proceedings, and hearings on the record proceedings. Proposed 39 CFR part 3010, subpart E provides basic information for notice and comment proceedings. Proposed 39 CFR part 3010, subpart F provides detailed information for hearings on the record. The six subpart headings proposed for 39 CFR part 3010 are shown in Table IV–1.

TABLE IV–1—SUBPART ORGANIZATION

Part 3010—rules of practice and procedure	
Subpart	Title
Subpart A	General Provisions.
Subpart B	Filing Requirements.
Subpart C	Participation in Commission Proceedings.
Subpart D	Notices, Motions, and Information Requests.
Subpart E	Proceedings Using Notice and Comment Procedures.
Subpart F	Proceedings with an Opportunity for a Hearing on the Record.

The reorganization of the rules of practice in 39 CFR part 3010, subpart A requires the updating of all section numbers and cross-references within the rules and in other rules and regulations in 39 CFR chapter III in which reference is made to a rule of practice. Except for quoted material, all gender specific terms are eliminated from the proposed rules (he/she, him/her, etc.).

Further information concerning each subpart appears below. Each subpart is divided into sections. The organization of the sections within each subpart is discussed first. This is followed by a section-by-section description. The descriptions either describe any new material, or point to what section of current 39 CFR part 3001 the material was derived from. Any changes to current 39 CFR part 3001 material are described.

B. Subpart A—General Provisions

Subpart A to 39 CFR part 3010, General Provisions, are generally applicable to all practice before the Commission. This subpart provides definitions that are used throughout the rules. It explains the establishment of dockets for consideration of matters before the Commission. It describes the publication of procedural schedules for docketed proceedings. It allows the Commission to consolidate or sever proceedings when appropriate. The proposed regulations explain that the Commission typically sits *en banc* in proceedings. They also provide requirements for assigning a presiding officer to administer the day-to-day activities of a proceeding, and procedures for appealing a decision by a presiding officer to the full Commission. Administrative matters such as the computation of time and the automatic closure of inactive dockets are also described. The organization of 39 CFR 3010, subpart A, General Provisions, is shown in Table IV–2.

TABLE IV–2—SUBPART A—GENERAL PROVISIONS

Subpart A—general provisions		
Proposed section No.	Section name	Derived from section No.
3010.100	Applicability and scope of rules	3001.1 3001.3 3001.4
3010.101	Definitions	3001.5
3010.102	Commission dockets	3001.13
3010.103	Procedural schedules in docketed proceedings	3001.13
3010.104	Consolidation and severance of proceedings	3001.14
3010.105	Consideration of matters before the Commission	.....
3010.106	Presiding officers	3001.23
3010.107	Appeals from interlocutory rulings by presiding officers	3001.32
3010.108	Computation of time	3001.15
3010.109	Automatic closure of inactive dockets	3001.44 3001.45

Section 3010.100, Applicability and scope of rules. Proposed § 3010.100 combines elements of current §§ 3001.1, 3001.3, and 3001.4 of this chapter.

Proposed § 3010.100(a), which states that the rules of practice apply to practice before the Commission, currently appears as § 3001.3 of this chapter.

Proposed § 3010.100(b), which describes the order of precedence of rules, is new. It is necessary to establish an order of precedence for applying the rules in chapter III because the chapter contains rules that are generally applicable (39 CFR part 3010), and rules that are applicable in specific instances (the remainder of 39 CFR chapter III). Whenever questionable, the specific rules take precedence over the general rules.

Proposed § 3010.100(c) and (d), which generally allow exceptions to the rules of practice, restate current § 3001.1 of this chapter and parts of current § 3001.3 of this chapter. Proposed § 3010.100(e), which describes how to refer to the rules of practice, currently appears as § 3001.4 of this chapter.

Section 3010.101, Definitions. Proposed § 3010.101 incorporates, and in some instances revises, the definitions that appear in current § 3001.5 of this chapter. The proposed definitions now appear in alphabetical order. The current definitions for *Act, Complainant, Negotiated service agreement, Petitioner, Postal Service, Postal service, Product, Public Representative, Rate of class of general applicability, Secretary, and Small business concern* are incorporated with minor editorial changes.

The definition of *Commission or Commissioner* is modified by adding the address and business hours of the Commission. The definition of *Effective date* is modified by changing the effective date from the date of issuance to the date the document is posted on the Daily Listing page of the Commission's website, unless otherwise specified. In almost all instances, the date of issuance will be the same as the date the publication is posted on the Daily Listing page. The significance of the change is that the date of posting is also the date that persons are deemed to receive actual notice of the publication. The definition for *Hearing* has been clarified to specifically refer to hearings on the record.

The definition for *Participant* has been simplified to refer to any person who participates, or seeks to participate in a proceeding. The intent is to use ''participant'' as a generic term. Two changes are made to the definition of *Party*. First, the Public Representative is always considered a party in a proceeding without the need to file a notice of intervention. Second, the term ''party'' is only applicable in proceedings docketed for a hearing on the record. It is not applicable to participants in notice and comment proceedings.

The definition of *Person* is modified to include a limited liability company. ''Governmental agency'' within the definition of person is changed to the more general term ''governmental entity.'' This eliminates potential confusion that can result from use of the word ''agency,'' which is frequently defined by statute in ways that are unrelated to the purposes of the Commission's rules of practice.

The definition of *Presiding officer* is changed. The current definition is not specific. It currently may apply to a ranking individual that presides over a proceeding, or to a person specifically designated to preside over a proceeding. The proposed definition limits the definition to a person specifically designated to preside over a proceeding.

The definition of *Record* is changed. The current definition appears to refer to the ''evidentiary record'' developed for a hearing on the record. The proposed definition is more generic by including all documents and other material in a docket. This is more appropriate because the majority of proceedings before the Commission are notice and comment proceeding that technically do not develop an evidentiary record. When a more specific definition of record is necessary, terms such as ''evidentiary record'' or ''certified record'' may be used.

New definitions for the terms *Proceeding* and *website* are added. The current definition for *Commission meetings* is moved to proposed § 3010.100(a).

Section 3010.102, Commission dockets. Proposed § 3010.102 includes mostly new material. Proposed § 3010.102(a) and (b) describe who may initiate a docket before the Commission. Proposed § 3010.102(c) and (h), which require the Secretary to maintain a docket and make the material submitted in a docket accessible, are derived from current § 3001.13 of this chapter. Proposed § 3010.102(d) specifies that the Secretary is responsible for assigning a docket designation to all matters that potentially come before the Commission. It also specifies the common docket designations that are currently in use.

Proposed § 3010.102(e) informs filers that a matter is not before the Commission until the Commission (or the Secretary in the case of certain negotiated service agreements) formally initiates a proceeding. This is meant to rectify a common erroneous belief that obtaining a docket number alone indicates that a matter is before the Commission.

Proposed § 3010.102(f) states that the substance of the matter presented to the Commission, not the assigned docket type, shall govern the procedural requirements of the docket. This is intended to alleviate the need to refile, when a matter is filed under the incorrect docket designation, or when a matter may be considered under multiple docket designations but not all designations are included.[18] The Commission has the expertise to review a pleading and act accordingly without a need to refile.

Proposed § 3010.102(g) states that all material filed with the Commission shall include the assigned docket designation. Proposed § 3010.102(i) states that ''active'' dockets can only be closed by the Commission as a whole. This is meant to act as a reminder to presiding officers that only the Commission may close an active docket.

Section 3010.103, Procedural schedules in docketed proceedings. Proposed § 3010.103 provides for the development of a procedural schedule for docketed proceedings. This is derived from current § 3001.13 of this chapter.

Section 3010.104, Consolidation and severance of proceedings. Proposed § 3010.104 incorporates current § 3001.14 of this chapter with minor editorial revisions.

Section 3010.105, Consideration of matters before the Commission. Proposed § 3010.105 contains new material. Proposed § 3010.105(a) states that the Commission typically sits *en banc* in all matters that come before the Commission. Proposed § 3010.105(b) states that decisions to open or close an active docket are made by the Commission as a whole (except for certain negotiated service agreements). These paragraphs merely describe how the Commission has functioned for most of its history.

[18] For example, many proceedings designated as rate change dockets also contain minor classification changes. Historically, the rate change and the classification change are considered under the same docket heading. In some instances, dockets have mistakenly been filed under the incorrect heading. There is no reason to require that the material be refiled under the correct heading. However, this exception is not intended, for example, to allow significant classification changes that warrant analysis on their own merits from being included in annual rate change dockets. In this instance, the Commission may require that the classification changes be filed separately.

Section 3010.106, Presiding officers. Proposed § 3010.106 describes the designation and duties of a presiding officer. Proposed § 3010.106(a) contains new material, which describes the authority to designate a presiding officer. Proposed § 3010.106(b) contains new material, which directs the Secretary, as has been the practice of the Commission, to issue a notice of the appointment of a presiding officer. Proposed § 3010.106(c) through (e) describe the authority delegated to a presiding officer, the presiding officer's responsibilities for the conduct of hearings, and the potential disqualification of a presiding officer. These last paragraphs are incorporated from current § 3010.23.

Section 3010.107, Appeals from interlocutory rulings by presiding officers. Proposed § 3010.107 incorporates current § 3001.32 of this chapter with several editorial revisions to clarify the rules.

Section 3010.108, Computation of time. Proposed § 3010.108 incorporates current § 3001.15 of this chapter with several editorial revisions. The current material is divided into several paragraphs, and additional information added. The modifications are not meant to change the interpretation of the computation of time in any way.

Section 3010.109, Automatic closure of inactive dockets. Proposed § 3010.109 incorporates current §§ 3001.44 and 3001.45 of this chapter with several editorial revisions.

C. Subpart B—Filing Requirements

Subpart B of 39 CFR part 3010 provides the requirements for filing material with the Commission. Most of the filing requirements that are in practice today remain unchanged. The one change of significance, explained below, relates to the labeling of library references. Most of the current regulations were written at a time when hardcopy documents were filed with a requirement for physical service of material on participants in the proceeding. With the advent of the Filing Online system, these regulations were modified, but never fully rewritten, and thus contain relics of the past system. Therefore, most of the proposed regulations are rewritten to represent current practice utilizing the Filing Online system. The organization of 39 CFR 3010, subpart B, Filing Requirements, is shown in Table IV–3.

TABLE IV–3—SUBPART B—FILING REQUIREMENTS

Subpart B—filing requirements		
Proposed section No.	Section name	Derived from section No.
3010.120	Filing material with the Commission	3001.9(a) 3001.10(a) 3001.11(a)
3010.121	Filing Online system	3001.9(c)
3010.122	Material filed using method other than the Filing Online system	3001.9(c) 3001.10(c)
3010.123	Rejected filings	3001.9(d)
3010.124	Form and content of text-based documents filed with the Commission	3001.10 3001.11
3010.125	Library references	3001.31(b)(2)
3010.126	Subscription	3001.11(e)
3010.127	Service	3001.12

Section 3010.120, Filing material with the Commission. Proposed § 3010.120 incorporates elements of current §§ 3001.9(a), 3001.10(a), and 3001.11(a) of this chapter. With certain listed exceptions, proposed § 3010.120(a) requires that all material be filed with the Commission using the Filing Online system. This represents no change in current filing requirements. One exception is added in proposed § 3010.120(a)(3) that allows comments to be filed in hard copy by persons who are unfamiliar with Commission practice and are therefore unaware of, or unable to use, the Filing Online system. This enables the Commission to post material to its website that is frequently obtained from a broad spectrum of participants that may or may not precisely comply with filing requirements. Proposed § 3010.120(b) provides an alternative method of filing material subject to the exceptions listed in proposed § 3010.120(a).

Section 3010.121, Filing Online system. Proposed § 3010.121 incorporates elements of current § 3001.9(c) of this chapter and provides additional information. Proposed § 3010.121(a) states that only registered users of the Filing Online system may file material using the system. It also explains that there are two types of account registrations and provides guidance on where to find additional information. This paragraph is derived from current § 3001.9(c) of this chapter. Proposed § 3010.121(b) and (c) explain the difference between temporary and permanent account holders. The expiration of a temporary account is extended from 10 to 35 days to potentially allow temporary account holders to file both comments and reply comments in those proceedings in which the Commission authorizes two rounds of comments to be filed. Proposed § 3010.121(d) explains the difference between the filing date of a document and the date of its acceptance by the Commission. This information is derived from current § 3001.9(c) of this chapter.

Section 3010.122, Material filed using method other than the Filing Online system. Proposed § 3010.122 incorporates elements of current §§ 3001.9(c) and 3001.10(c) of this chapter. Proposed § 3010.122(a) explains the difference between the filing date of a document and the date of acceptance by the Commission for material that is filed using a filing system other than the Filing Online system. This information is derived from current § 3001.9(c) of this chapter. Proposed § 3010.122(b) provides an exception for the filing of documents using computer media. This information is derived from current § 3001.10(c) of this chapter.

Section 3010.123, Rejected filings. Proposed § 3010.123 incorporates current § 3001.9(d) of this chapter with several revisions. The proposed rule clarifies that, if a filing is rejected, the Secretary will ''attempt'' to notify the

person submitting the filing of the reasons for its rejection. The current rule can be mistakenly interpreted to suggest that the Secretary has an affirmative duty to notify the filer of the reasons for rejection. However, notification is only provided as a courtesy, and to expeditiously resolve issues if possible. The proposed rule also specifies that the Office of the General Counsel shall make the final determination regarding acceptance of any filing. This will continue current practice.

Section 3010.124, Form and content of text-based documents filed with the Commission. Proposed § 3010.124 is derived from portions of current §§ 3001.10 and 3001.11 of this chapter. Although there are no significant changes in the form and content requirements, the language is updated to reflect the change from a purely paper-based filing system to the electronic Filing Online system.

Proposed § 3010.124(a), Equivalent paper size, is derived from § 3001.10(b) of this chapter. Proposed § 3010.124(b), Line spacing and font, is derived from § 3001.10(a)(1) of this chapter. Proposed § 3010.124(c), Caption, title, page numbering and table of contents, is derived from §§ 3001.10(a) and 3001.11(f) of this chapter. Proposed § 3010.124(d), Improper matter, is derived from § 3001.11(d) of this chapter. Proposed § 3010.124(e), Exception for appeals of post office closings and consolidations, is derived from § 3001.10(d) of this chapter.

Section 3010.125, Library references. Proposed § 3010.125 incorporates current § 3001.31(b)(2) of this chapter with additional explanatory language. The use of library references has evolved over the years. Library references originally were considered an exception to typical document filings. They were used to permit the filing of material containing large amounts of data in omnibus rate proceedings conducted as hearings on the record. Access to library references was cumbersome and frequently required participants to visit the Commission's offices to examine the material. A library reference did not have to be served on a party unless requested. Today, most if not all library references are electronically transmitted, easily accessible to all parties, and generally used for filing data content (and other) materials in most docket types. Thus, the library reference regulations are moved from the evidence section applicable to hearings on the record, to the filing requirements section that is applicable to all proceeding types.

Proposed § 3010.125(a) provides a definition of a library reference. The definition is derived from current § 3001.31(b)(2) of this chapter. Proposed § 3010.125(b) addresses the categorization of library references. The categories of library references are unchanged from those appearing in current § 3001.31(b)(2) of this chapter.

Proposed § 3010.125(c) discusses the labeling of library references. This material is new and contains a significant change from current practice. The various parts of the library reference designation shall be separated by dashes ''-.'' Previously, the last segment was separated by a slash ''/.'' The slash causes technical computer filing issues if used within a file name of a library reference.

Proposed § 3010.125(d) and (e), filing procedure and optional preface or summary are the same, with minor editorial revisions, as in current § 3001.31(b)(2) of this chapter.

Section 3010.126, Subscription. Proposed § 3010.126 incorporates current § 3001.11(d) of this chapter with several revisions. The subscription requirement is specifically extended to library references to the extent referenced in the library reference's notice of filing. Subscription by electronic signature appearing on hardcopy documents is allowed. The electronic signature provision is added to accommodate the acceptance of documents transmitted by email or other means by persons unfamiliar with or unable to access the Filing Online system. This frequently occurs when members of the public, unfamiliar with Commission practice, file comments in dockets that are of a general public interest.

Section 3010.127, Service. Proposed § 3010.127 is derived from the service requirements of current § 3001.12 of this chapter. Although updated from time-to-time, the current service requirements were written prior to the development of the Filing Online system and focused more on service of hardcopy documents.

The proposed rule relies principally upon the electronic transmission of documents to accomplish service. It states that material shall be deemed served upon posting to the Commission's website. Proposed § 3010.125(b) provides a temporary hard copy alternative for certain persons with a demonstrated inability to effectively utilize the Filing Online system. Proposed § 3010.125(c) requires the maintenance of a service list for instances where physical service is otherwise still necessary.

D. Subpart C—Participation in Commission Proceedings

Proposed 39 CFR 3010, subpart C describes the various forms of participation in Commission proceedings. Locating this information in one subpart informs potential participants of the scope of participation in the various proceeding types. The vast majority of matters before the Commission fall within three types of proceedings: notice and comment proceedings, administrative proceedings (appeals of Postal Service determinations to close or consolidate post offices), and hearings on the record.

For notice and comment proceedings, the Commission provides persons the opportunity to comment.[19] The opportunity to comment is provided by proposed § 3010.140. Participation in proceedings that consider appeals of Postal Service determinations to close or consolidate post offices is generally limited to those with some association to the actual post office. Participation in these dockets is authorized by proposed § 3010.141. Hearings on the record (generally, those proceedings that consider changes in the nature of postal services and complaint cases) require formal intervention to fully participate. The opportunity to intervene is provided by proposed § 3010.142. Hearings on the record also allow participation by comment (proposed § 3010.140). Participants in proceedings are allowed to have representation as provided in proposed § 3010.143. Finally, certain Commission investigative or prosecuting officers are restricted by proposed § 3010.144 from participating in any docket.

The organization of 39 CFR part 3010, subpart C, Participation in Commission Proceedings, is shown in Table IV–4.

[19] It should be understood that the proponent of the matter docketed as a notice and comment proceeding has responsibilities in addition to merely providing comments.

TABLE IV–4—SUBPART C—PARTICIPATION IN COMMISSION PROCEEDINGS

Subpart C—Participation in commission proceedings		
Proposed section No.	Section name	Derived from section No.
3010.140	Opportunity for comment	
3010.141	Appeals of Postal Service determinations to close or consolidate post offices	3025.10(a) 3025.14
3010.142	Parties to hearings on the record	3001.20 3001.20a 3001.20b
3010.143	Representation of persons	3001.6
3010.144	Limitation of participation by investigative or prosecuting officers	3001.8

Section 3010.140, Opportunity for comment. Proposed § 3010.140 contains new material. It loosely incorporates aspects of current § 3001.20b of this chapter, Informal expression of views by persons not parties or limited participators (commenters). Previously, this provided an avenue for submitting informal comments during hearing on the record proceedings.

The proposed rule broadens and formalizes the current rule by allowing persons to submit comments in most proceeding types before the Commission. This is necessary because the vast majority of matters before the Commission are now administered as notice and comment proceedings, and not administered as hearings on the record. It also continues to allow comments by non-intervening persons in hearings on the record.

The proposed rules specify that allowing reply comments is at the discretion of the Commission, or the presiding officer, and that the timing and scope of comments and reply comments may be specified by notice, order, or presiding officer's ruling.

The Commission has received many inquiries on the need to intervene in notice and comment proceedings as a prerequisite to filling comments. The proposed rule explicitly states there is no requirement to intervene in order to submit comments.

Section 3010.141, Appeals of Postal Service determinations to close or consolidate post offices. Proposed § 3010.141(a) restates the requirement from current § 3025.10(a) of this chapter that only persons served by a post office may initiate an appeal of a Postal Service decision to close or consolidate that post office. Proposed § 3010.141(b) restates the requirement from current § 3025.14 of this chapter, which defines the class of other persons that may participate in the appeal by submitting comments.[20] The proposed rules do not intend to either expand or contract the class of persons that have been eligible to participate in the appeal process.

Proposed § 3010.141(c) includes the Public Representative and the Postal Service in the class of persons allowed to participate in the appeal process, and specifically prohibits any additional class of person.

Proposed § 3010.141(d) provides a short, three-day window for opposing participation by any person asserting eligibility.

Section 3010.142, Parties to hearings on the record. Proposed § 3010.142 provides the requirements for participating in a hearing on the record. This section, in effect, replaces current § 3001.20 of this chapter, Formal intervention; § 3001.20a of this chapter, Limited participation by persons not parties; and § 3001.20b of this chapter, Informal expression of views by persons not parties or limited participators (commenters).

Currently, formal intervention allows a person to become a party to a proceeding, and provides a complete set of rights such as the ability to conduct discovery, file testimony, file briefs, etc. A limited participator generally holds the same set of rights as a person that has formally intervened, except that a limited participator is shielded from the requirement to respond to discovery requests unrelated to a limited participator's testimony, if ever provided.[21] An informal expression of views is akin to comments filed by a participant, except that an informal expression of views is filed without posting to the Commission's website.

Section 3010.142(a) of the proposed rules replaces the three levels of participation with two levels: A formal intervenor that becomes a party to the proceeding and a commenter that participates solely by providing comments.[22] A party is provided a complete set or rights such as the ability to conduct discovery, file testimony, file briefs, etc. A commenter may only participate by providing comments.[23] Comments generally are posted to the Commission's website.[24]

Proposed § 3010.142(b) through (e) concerning Notices of intervention, the Form and time of filing of the notice, oppositions to intervention, and the Effect of intervention are the same with minor editorial corrections as found in current § 3001.20(b) through (e) of this chapter.

Section 3010.143, Representation of persons. Proposed § 3010.143 incorporates current § 3001.6 of this chapter with several editorial revisions. To remove potential ambiguity, the standard for conduct of representatives is changed from a general ''the courts of the United States'' to a more specific ''the District of Columbia Rules of Professional Conduct.''

Section 3010.144, Limitation of participation by investigative or prosecuting officers. Proposed § 3010.144 incorporates current § 3001.8 of this chapter with one revision. Currently, the participation limitations placed on investigative or prosecuting officers is applicable only to hearings on

[20] Current § 3025.14(a) of this chapter mistakenly implies that some form of intervention is necessary to participate. This will be corrected in a future rulemaking.

[21] This created the potential for a person to intervene as a limited participator for the purpose of propounding discovery directed to the Postal Service to seek a variety of information from the Postal Service, with no intent of ever developing testimony of their own and fully participating in the proceeding.

[22] With the change in the nature of activities before the Commission (the Commission no longer hears omnibus rate cases), the utility of the limited participator category is reduced. This is consistent with a change in 2014 where the Commission eliminated the limited participator status from nature of service proceedings as having ''no affirmative value.'' Docket No. RM2012–4, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3661, May 20, 2014, at 26 (Order No. 2080).

[23] There is nothing to prevent a commenter from indirectly participating in discovery or other aspects of the proceeding by filing motions with the Commission or presiding officer. However, it is completely up to the discretion of the Commission or presiding officer if this will be allowed.

[24] Comments may be filed under seal pursuant to proposed 39 CFR part 3011 (current 39 CFR part 3007), when appropriate.

the record. The proposed rule makes this limitation generally applicable to all proceedings.

E. Subpart D—Notices, Motions, and Information Requests

Notices, motions, and information requests are three of the more common types of documents used in all forms of Commission proceedings. They are described in proposed 39 CFR part 3010, subpart D, Notices, Motions, and Information Requests. The rules for notices and motions begin with general requirements for each document type. In each case, this is followed by a select set of specific notice and motion types. These specific types are currently described throughout 39 CFR chapter III. The proposed subpart relocates this material into one place.

Notices and orders initiating proceeding, proposed § 3010.151, is developed by reviewing all similar notices and orders initiating proceeding requirements appearing throughout 39 CFR chapter III. The intent is for the rules to eventually specify only one such requirement. Notices initiating dockets for consideration of negotiated service agreements, proposed § 3010.152, is all new material. It represents current practice for the Commission's review of negotiated service agreements.

The generic Motions, Motions for waiver, Motions for continuances and extensions of time, and Motions to strike section, proposed §§ 3010.160 through 3010.162, and 3010.164 respectively, relocates material, which currently appears in various locations of 39 CFR part 3001, into one location. The Motions for late acceptance material, proposed § 3010.163, is all new. It memorializes the current practice of requiring a motion for late acceptance to accompany any material filed after an established deadline.

The Information requests material, proposed § 3010.170, is expanded by placing additional requirements on a party (other than the Postal Service) in a hearing on the record to comply with information requests.

Subpart D of 39 CFR part 3010 is organized into 3 segments: §§ 3010.150 through 3010.152 concern notices; §§ 3010.160 through 3010.164 concern motions; § 3010.170 describes information requests. The organization of 39 CFR part 3010, subpart D, Notices, Motions, and Information Requests, is shown in Table IV–5.

TABLE IV–5—SUBPART D—NOTICES, MOTIONS, AND INFORMATION REQUESTS

Subpart D—Notices, motions, and information requests		
Proposed section No.	Section name	Derived from section No.
3010.150	Notices	3001.17 3001.19 3001.41
3010.151	Notices and orders initiating proceeding	3001.17 3001.19 3001.41
3010.152	Notices initiating dockets for consideration of negotiated service agreements	3001.41
3010.160	Motions	3001.21
3010.161	Motions for waiver	3001.22
3010.162	Motions for continuances and extensions of time	3001.16
3010.163	Motions for late acceptance	3001
3010.164	Motions to strike	3001.21(c)
3010.170	Information requests	3001.100 3001.101

Section 3010.150, Notices. Proposed § 3010.150 provides a general description of a notice used in Commission proceedings. It is derived from current §§ 3001.17 and 3001.41 of this chapter, but is very broad in scope. Current § 3001.17 of this chapter applies only to notices issued by the Commission in proceedings conducted as hearings on the record. Similarly, current § 3001.41 of this chapter applies only to notices issued by the Commission in rulemaking proceedings. When used in a generic sense, a notice is used to communicate the occurrence of an event, and should not be used to direct the actions of others. Typical examples are: The notice of filing a library reference, a notice of intervention, a Postal Service notice of rate change, etc.

Proposed § 3010.150(a) provides a comprehensive description of a notice as a document ''that announces a past, present, or future event or occurrence.'' It prohibits the combination of a notice with requests that should be presented by motion. It also prohibits the Commission or a presiding officer from combining a notice with an order or ruling unless the document being issued clearly states the intent of the document being issued. Proposed § 3010.150(b) requires documents filed as notices to contain the word ''notice'' in the title and it clarifies that there are additional requirements for the content of specific types of notices provided throughout 39 CFR chapter III of the Commission's regulations.

Section 3010.151, Notices and orders initiating proceeding. Proposed § 3010.151 establishes generally applicable provisions for notices and orders initiating proceedings. Proposed § 3010.151(a) makes the proposed rule applicable to all proceedings initiated by the Commission except proceedings covered by proposed § 3010.152 (that consider negotiated service agreements) and proceedings covered by proposed 39 CFR part 3021 of this chapter (that consider appeals of post office closings and consolidations).

Proposed § 3010.151(b) prescribes the content of all notices and orders issued pursuant to proposed § 3010.151, while proposed § 3010.151(c) prescribes additional content for notices and orders that initiate proceedings docketed for a hearing on the record pursuant to proposed § 3010.300.

Section 3010.152, Notices initiating dockets for consideration of negotiated service agreements. Three years ago, the Commission began the practice of issuing a single notice that covers multiple dockets in which the Postal Service requests reviews of negotiated

service agreements.[25] Proposed § 3010.152 codifies this practice. Proposed § 3010.152(a) authorizes the Secretary of the Commission to issue such notices. Proposed § 3010.152(b) prescribes the content of such notices and provides for their publication in the **Federal Register**.

Section 3010.160, Motions. Proposed § 3010.160 incorporates current § 3001.21(a) and (b) of this chapter with minor editorial revisions. A new § 3010.160(d) is added to confirm that a ruling on a motion may be made without awaiting a response if the motion is unopposed or if the Commission determines that immediate action is appropriate.

Section 3010.161, Motions for waiver. Proposed § 3010.161 incorporates and reorganizes current § 3001.22 of this chapter with minor editorial revisions.

Section 3010.162, Motions for continuances and extensions of time. Proposed § 3010.162 incorporates current § 3001.16 of this chapter with minor editorial revisions.

Section 3010.163, Motions for late acceptance. Proposed § 3010.163 is derived from current § 3001.21 of this chapter and reflects the Commission's established practice of permitting participants in Commission proceedings to request late acceptance of submissions that did not meet an applicable deadline. Proposed § 3010.163 complements proposed § 3010.162 under which participants may seek continuances or extensions of time prior to the applicable deadline.

Section 3010.164, Motions to strike. Proposed § 3010.164 incorporates the content of current § 3001.21(c) of this chapter with minor editorial revisions.

Section 3010.170, Information requests. Proposed § 3010.170 incorporates and reorganizes current §§ 3001.100 and 3001.101 of this chapter and include one significant revision. Current §§ 3001.100 and 3001.101 of this chapter were written with a focus on notice and comment, and potentially other forms of ''informal'' proceedings. The proposed revision is meant to encompass a ''formal'' hearing on the record proceeding within the rule. Thus, it adds a requirement that a party (other than the Postal Service) to a hearing on the record proceeding is also required to comply with information requests.[26]

F. Subpart E—Proceedings Using Notice and Comment Procedures

Only one of the Commission's existing rules of practice, current § 3001.41 of this chapter, addresses proceedings that use notice and comment procedures. On its face, § 3001.41 of this chapter applies only to rulemaking proceedings. In practice, the Commission frequently uses notice and comment procedures in proceedings that do not involve the issuance, amendment, or repeal of a rule or regulation.

The following are additional examples of notice and comment proceedings currently administered by the Commission:

- Market dominant price adjustments (*see also* current 39 CFR part 3010);
- Competitive product price adjustments (*see also* current 39 CFR part 3015 of this chapter);
- New products and transfer of products between the market dominant and competitive categories of mail (*see also* current 39 CFR part 3020 of this chapter);
- Consideration of market tests (*see also* current 39 CFR part 3035 of this chapter);
- Proposals to change accepted analytical principals (*see also* current § 3050.11 of this chapter); and
- The annual determination of compliance (*see also* current 39 CFR part 3050 of this chapter).

Each of the above notice and comment proceedings have specific rules that are applicable to the proceeding. In some instances the specific rules specify procedures to administer the docket, in some cases they do not. Other proceedings also follow notice and comment procedures, but have absolutely no rules associated with them, Public Inquiry (PI) dockets for example.

Thus, this rulemaking proposes to add 39 CFR 3010, subpart E, Proceedings Using Notice and Comment Procedures, to provide basic guidance for administering notice and comment proceedings. This material replaces current § 3001.41 of this chapter. When the procedural issue before the Commission is not addressed by a specific rule, the general rules proposed in 39 CFR part 3010, subpart E should be followed. Over time, the specific rules will be edited and harmonized such that the basic procedures for notice and comment proceedings will only appear in 39 CFR part 3010, subpart E.[27]

As described below, proposed 39 CFR part 3010, subpart E has a clearly defined scope, contains provisions governing the initiation of notice and comment proceedings, provides specific direction on how persons may participate in such proceedings, and sets forth certain minimum requirements for Commission action. The organization of 39 CFR part 3010, subpart E, Proceedings Using Notice and Comment Procedures, is shown in Table IV–6.

TABLE IV–6—SUBPART E—PROCEEDINGS USING NOTICE AND COMMENT PROCEDURES

Subpart E—Proceedings using notice and comment procedures		
Proposed section No.	Section name	Derived from section No.
3010.200	Applicability	3001.41
3010.201	Initiation of a proceeding	3001.41
3010.202	Participation in notice and comment proceedings	3001.41
3010.203	Commission action	3001.41

Section 3010.200, Applicability. Proposed § 3010.200 establishes the scope of 39 CFR part 3010, subpart E. Proposed § 3010.200(a) makes 39 CFR part 3010, subpart E broadly applicable to proceedings that consider the issuance, amendment, or repeal of any Commission rule or regulation; proceedings that seek information that can be used to inform future Commission action; and any other

[25] *See* Docket Nos. MC2016–152, *et al.,* Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, June 13, 2016.

[26] Although a proponent (other than the Postal Service) in any matter not docketed as a hearing on the record is not required to comply with information requests, they do so at their own risk.

[27] Until further notice, a matter shall be filed pursuant to the specific rule, if applicable. Only when no other option exists shall a matter be filed pursuant to proposed 39 CFR part 3010, subpart E.

proceeding the Commission determines is appropriate.

Proposed § 3010.200(b) excludes certain specific types of proceedings from coverage under proposed 39 CFR part 3010, subpart E. Excluded from coverage are proceedings conducted under proposed 39 CFR part 3010, of this part as hearings on the record. The following parts of proposed 39 CFR chapter III, subchapter D, Special Rules of Practice for Specific Proceeding Types also are excluded: Proposed 39 CFR part 3020, Rules Applicable to Requests for Changes in the Nature of Postal Services, proposed 39 CFR part 3021, Rules for Appeals of Postal Service Determinations to Close or Consolidate Post Offices, proposed 39 CFR part 3022, Rules for Complaints, proposed 39 CFR part 3023, Rules for Rate or Service Inquiries, and proposed 39 CFR part 3024, Special Rules for Complaints Alleging Violations of 39 U.S.C. 404a.

Section 3010.201, Initiation of a proceeding. Proposed § 3010.201 describes how proceedings can be initiated under subpart E and identifies the rules of practice applicable to such proceedings. Proposed § 3010.201(a) provides for the initiation of a proceeding by the Commission by the issuance of a notice under proposed § 3010.151.

Proposed § 3010.201(b) provides for the initiation of a proceeding under subpart E upon request. Section 3010.201(b)(1) provides that any person may request the initiation of a proceeding under 39 CFR part 3010, subpart E by filing a petition that contains the information listed in that subparagraph. Section 3010.201(b)(2) provides for three possible responses by the Commission to the petition. The Commission can, at its discretion, either initiate a proceeding by issuing a notice under § 3010.151, reject the petition, or defer a decision on whether to grant or reject the petition.

Proposed § 3010.201(c) subjects proceedings under 39 CFR part 3010, subpart E to the rules of practice and procedure in proposed 39 CFR part 3010, subparts A, B, C, and D.

Section 3010.202, Participation in notice and comment proceedings. Proposed § 3010.202 describes the means by which persons may participate in notice and comment proceedings conducted under 39 CFR part 3010, subpart E. Proposed § 3010.202(a) identifies the filing of comments under proposed § 3010.140 as the primary means of participation. The deadline for comments will be specified in the Commission's order issued under proposed § 3010.151 initiating the proceeding. The Commission also has the option of providing in the initial notice for the filing of reply comments.

Proposed § 3010.202(b) provides for the issuance of information requests pursuant to proposed § 3010.170 by the Commission, the Chairman, or a presiding officer in its or their discretion or upon motion by an interested person.

Proposed § 3010.202(c) provides for the possibility of one or more technical conferences being convened by the Commission, the Chairman, or a presiding officer in its or their discretion or upon motion by an interested person.

Proposed § 3010.202(d) provides for the possibility of oral presentations being authorized by the Commission, the Chairman, or a presiding officer in its or their discretion or upon motion by an interested person.

Proposed § 3010.202(e) provides that the Commission, the Chairman, or a presiding officer may order additional procedures as appropriate.

Section 3010.203, Commission action. Proposed § 3010.203 establishes certain general parameters for Commission action in proceedings conducted under 39 CFR part 3010, subpart E. Proposed § 3010.203(a) requires the Commission to consider all relevant comments and materials of record before taking final action. It further requires that at a minimum final rules or regulations must be published in the **Federal Register**.

Proposed § 3010.203(b) provides, in general, that any issuance, amendment or repeal of a rule or regulation shall be effective not less than 30 days from publication in the **Federal Register**. If an effective date is not specified in the order issuing, amending, or repealing a rule or regulation, the effective date shall be thirty days after publication in the **Federal Register**, unless otherwise provided by statute or by the Commission.

Proposed § 3010.203(c) provides that for good cause shown any issuance, amendment, or repeal of a rule or regulation may be made effective less than 30 days from publication in the **Federal Register**.

Proposed § 3010.203(d) provides that certain types of rules, such as rules of organization, procedure or practice, and statements of policy may be made effective without regard to the 30 day requirement set forth in proposed § 3010.203(b).

G. Subpart F—Proceedings With an Opportunity for a Hearing on the Record

1. General

The rules of practice and procedure currently appearing in 39 CFR part 3001, subpart A were originally developed with a focus on administering hearings on the record. Many of the rules within this set of rules are generally applicable to most types of proceedings. This rulemaking has moved most of the rules that are generally applicable to 39 CFR part 3010, subparts A though D, as previously discussed. What remains of current 39 CFR part 3001, subpart A, are rules specifically applicable to hearings on the record. This rulemaking proposes to move these remaining rules into proposed 39 CFR part 3010, subpart F, Proceedings with an opportunity for a hearing on the record.

In most instances, hearing on the record practice has followed the published rules in 39 CFR part 3001, subpart A. Where this is not the case, this rulemaking revises the rules to represent current practice. Additionally, some rules are rewritten either for clarity or to provide further detail as explained below.

Arguably, the only substantive change proposed relates to the implicit reliance in the current rules on the use of Administrative Law Judges (ALJ). When the rules were originally written, it was envisioned that hearings on the record would be predominately administered by ALJs. The ALJs would prepare intermediate decisions for the Commission's consideration and action.[28] This practice was abandoned early in the Commission's history. It was replaced by a practice under which the Commission sits *en banc,* with a presiding officer handling the day-to-day activities of the hearing. The Commission as a whole then develops and issues a final decision without the need for an intermediate decision. The proposed rules continue the practice of the Commission sitting *en banc* with a presiding officer handling the day-to-day activities, but retain the option of employing an ALJ, and the option of developing an intermediate decision for the Commission's consideration, in future proceedings.

In most instances, the term ''participant'' is replaced with the term ''party'' throughout 39 CFR chapter III, subchapter F. With the elimination of ''limited participant'' status from the rules, only parties may fully participate in a hearing on the record, which eliminates the need for the broader term participant.[29]

[28] A presiding officer, other than an ALJ, also may be directed to develop an intermediate decision when the Commission is not sitting *en banc.*

[29] Non-parties may be provided with an opportunity to comment in hearings on the record,

Continued

Subpart F to 39 CFR part 3010 is organized into 4 segments. Sections 3010.300 through 3010.304 provide general information, including the initial steps for establishing a hearing on the record. Sections 3010.310 through 3010.313 describe the commonly used procedures for discovery. Sections 3010.320 through 3010.325 describe the hearing and the development of the evidentiary record. This section also discuss the possibility of settlement, and special (less common) provisions for *in camera* orders and depositions. Sections 3010.330 through 3010.336 describe the procedures from the submission of briefs through the issuance of a final decision. The organization of 39 CFR part 3010, subpart F, Proceedings with an Opportunity for a Hearing on the Record, is shown in Table IV–7.

TABLE IV–7—SUBPART F—PROCEEDINGS WITH AN OPPORTUNITY FOR A HEARING ON THE RECORD

Subpart F—Proceedings with an opportunity for a hearing on the record		
Proposed section No.	Section name	Derived from section No.
3010.300	Applicability	
3010.301	Notice of proceeding	3001.18(b, c)
3010.302	Prehearing conferences	3001.24
3010.303	Hearing format	3001.18
3010.304	Scheduling order	
3010.310	Discovery—general policy	3001.25
3010.311	Interrogatories for purpose of discovery	3001.26
3010.312	Requests for production of documents or things for purpose of discovery	3001.27
3010.313	Requests for admissions for purpose of discovery	3001.28
3010.320	Settlement conferences	3001.29
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2. Sections 3010.300 Through 3010.304, General Information, Including the Initial Steps for Establishing a Hearing on the Record

Section 3010.300, Applicability. Proposed § 3010.300 contains all new material. It specifies three situations in which a hearing on the record may be held: (1) In complaint proceedings; (2) in proceedings that consider changes to the nature of postal services if a determination is made that streamlined procedures of proposed 39 CFR part 3020 of this chapter are not appropriate; and (3) in those proceedings in which the Commission, in the exercise of its discretion, determines that a hearing on the record would be appropriate.

Section 3010.301, Notice of proceeding. Proposed § 3010.301 incorporates the notice requirement of current § 3001.18 of this chapter. It requires that notice be published in the **Federal Register**, and references the requirements for what should be included in that notice.

Section 3010.302, Prehearing conferences. Proposed § 3010.302 incorporates current § 3001.24 of this chapter with minor editorial revisions and one addition. The proposed rule adds a requirement that the presiding officer preside over a prehearing conference. If the presiding officer is unavailable, then the ranking Commissioner in attendance then presides.[30]

Section 3010.303, Hearing format. Proposed § 3010.303 is loosely based on current § 3001.18 of this chapter. It states that a hearing on the record may be held if requested by any party, or if the Commission determines that it is in the public interest. It explains that a hearing on the record may be a public hearing, or a hearing by the submission of ''paper'' material only. Finally, it limits participation in the public portion of any hearing to those that have intervened in the proceeding. The public may attend, in most instances, but not actively participate.

Section 3010.304, Scheduling order. Proposed § 3010.304 contains all new material. This rule requires the issuance of a scheduling order and memorializes what historically has been included in such orders. The content of the scheduling order specified by the rule is to be considered by the Commission or presiding officer, and adapted to the proceeding before the Commission as appropriate. Typical steps for a public hearing have been outlined. If the hearing is to be held by the submission of ''paper'' documents only, the schedule would likely be abbreviated.

Provisions are included concerning witness availability. Witness availability frequently has a significant impact on the procedural schedule. In the past, issues concerning witness availability have been resolved informally, or by last minute motions practice. This sometimes causes significant disruption to the flow of a public hearing. Thus, the rule requires parties to keep the Commission abreast of witness

but the rules for hearings on the record are otherwise not applicable to these persons.

[30] Order for presiding: (1) Presiding Officer, (2) Chairman of the Commission, (3) Vice Chairman of the Commission, or (4) longest serving Commissioner by years of service with the Commission.

availability issues in an attempt to reduce potential disruptions.

Finally, parties are put on notice that times for reconvening public hearings will be announced at the adjournment of the previous public hearing. Additional notices will not be issued, unless there is a failure to make the required announcement.

3. Sections 3010.310 Through 3010.313, Most Commonly Used Procedures for Discovery

Section 3010.310, Discovery—general policy. Proposed § 3010.310 incorporates current § 3001.25 of this chapter with minor editorial revisions.

Section 3010.311, Interrogatories for purpose of discovery. Proposed § 3010.311 incorporates current § 3001.26 of this chapter with minor editorial revisions.

Section 3010.312, Requests for production of documents or things for purpose of discovery. Proposed § 3010.312 incorporates current § 3001.27 of this chapter with minor editorial revisions.

Section 3010.313, Requests for admissions for purpose of discovery. Proposed § 3010.313 is based on current § 3001.28 of this chapter. The opening paragraphs are rewritten for clarity. Other minor editorial revisions are made to the paragraphs that follow.

4. Sections 3010.320 Through 3010.325, the Hearing, Development of the Evidentiary Record, Settlement, in Camera Orders, and Depositions

Section 3010.320, Settlement conferences. Proposed § 3010.320 incorporates current § 3001.29 of this chapter with minor editorial revisions.

Section 3010.321, Hearings. Proposed § 3010.321 is derived from current § 3001.30 of this chapter, but substantially revised. Proposed § 3010.321(a) describes the initial and subsequent notice requirements for hearings. Proposed § 3010.321(b) describes who presides over a hearing and the associated responsibilities. Proposed § 3010.321(c) describes notices of appearance. Proposed § 3010.321(d) describes requirements for witness availability. Proposed § 3010.321(e) describes the order of presentation at a hearing. Proposed § 3010.321(f) describes the swearing in of a witness and the requirements for a supplemental declaration. Proposed § 3010.321(g) describes the general flow of a hearing. Proposed § 3010.321(h) describes the special situation of entering institutional testimony. Proposed § 3010.321(i) through (k) describe related procedural matters. Proposed § 3010.321(l) provides the rules for transcript correction.

Section 3010.322, Evidence—general, and section 3010.323, Evidence—introduction and reliance upon studies and analyses. Current § 3001.31 of this chapter is divided into three parts. The material in current § 3001.31(b)(2) of this chapter concerning library references is generally applicable to all docket types. This material is moved to § 3010.125, library references, as previously discussed. The current paragraph numbering for the remaining material is unwieldly. Therefore, the material is divided into two sections to allow for more convenient numbering, and ease of finding and citing to the material. Thus, proposed § 3010.322 containing more general information incorporates current § 3001.31(a) through (j) of this chapter with additional editorial revisions. Proposed § 3010.323 containing more specific technical information incorporates current § 3001.31(k) of this chapter with additional editorial revisions.

Section 3010.324, In camera orders. Proposed § 3010.324 incorporates current § 3001.31a of this chapter with minor editorial revisions.

Section 3010.325, Depositions. Proposed § 3010.325 incorporates current § 3001.33 of this chapter with minor editorial revisions.

5. Sections 3010.330 Through 3010.336, Procedures From Briefs Through the Issuance of a Final Decision

Section 3010.330, Briefs. Proposed § 3010.330 incorporates current § 3001.34 of this chapter with minor editorial revisions.

Section 3010.331, Proposed findings and conclusions. Proposed § 3010.331 incorporates current § 3001.35 of this chapter with minor editorial revisions.

Section 3010.332, Oral argument before the presiding officer. Proposed § 3010.332 incorporates current § 3001.36 of this chapter with minor editorial revisions.

Section 3010.333, Oral argument before the Commission. Proposed § 3010.333 incorporates current § 3001.37 of this chapter with minor editorial revisions.

Section 3010.334, Commission decisions. Proposed § 3010.334 contains all new material. It requires the Commission to issue a final decision that is either based on an intermediate decision prepared by a presiding officer, an ALJ, or one that is developed by the Commission itself. It requires that the decision be based on record evidence and consider argument provided on brief. It does not require the decision to consider comments that may have been received from non-party interested persons. It requires the Commission to explain why any intermediate decision was not adopted in in whole, and resolve any exceptions to an intermediate decision. Finally, it directs that the Commission's decision be filed and made part of the record.

Section 3010.335, Intermediate decisions. Proposed § 3010.335 substantially revises the provisions of current §§ 3001.38 and 3001.39 of this chapter. Current § 3001.38 of this chapter provides the basis for omitting an intermediate decision. Current § 3001.39 of this chapter provides direction to produce an intermediate decision. Elements of both regulations are combined into the new proposed rule.

The proposed rule directs the issuance of an intermediate decision for the Commission's consideration when the Commission is not siting *en banc,* or when the presiding officer has otherwise been directed to do so. It requires that the intermediate decision be based on record evidence and consider argument provided on brief. It does not require the intermediate decision to consider comments that may have been received from non-party interested persons. It directs that the intermediate decision be filed and made part of the record. It requires Commission review of the intermediate decision and allows for parties to challenge the decision. Finally, it allows for omission of the intermediate decision at any time, and for the matter to be directly addressed by the Commission as a whole.

Section 3010.336, Exceptions to intermediate decisions. Proposed § 3010.336 incorporates current § 3001.40 of this chapter with minor editorial revisions. It also imposes an additional requirement to file notice of intent to file exceptions within seven days of the intermediate decision. This is imposed solely to avoid unnecessary delay in issuing a final decision when there is no intent to file exceptions.

V. Administrative Actions

A. Docket

The Commission establishes Docket No. RM2019–13 for consideration of the matters discussed in the body of this notice of proposed rulemaking.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. *See* 5 U.S.C. 601, *et seq.* (1980). If the proposed or final rules will not, if

promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. *See* 5 U.S.C. 605(b).

In the context of this rulemaking, the Commission's primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

C. Comments

Interested persons are invited to provide written comments concerning the proposed amendments to the Commission's rules of practice and the reorganization of the Commission's regulations in the Code of Federal Regulations. Comments are due no later than November 1, 2019. Reply comments are due no later than November 15, 2019. Material filed in this docket will be available for review on the Commission's website, *http://www.prc.gov.*

D. Public Representative

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

VI. Ordering Paragraphs

It is ordered:

1. Docket No. RM2019–13 is established for the purpose of considering amendments to the Code of Federal Regulations, title 39, chapter III, as discussed in this notice of proposed rulemaking.

2. Interested persons may submit comments no later than November 1, 2019.

3. Interested persons may submit reply comments no later than November 15, 2019.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Darcie S. Tokioka,

Acting Secretary.

List of Subjects

39 CFR Part 3000

Conflict of interests.

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3002

Organization and functions (Government agencies), Seals and insignia.

39 CFR Part 3003

Privacy.

39 CFR Part 3004

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

39 CFR Part 3005

Administrative practice and procedure, Confidential business information, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3007

Administrative practice and procedure, Confidential business information.

39 CFR Part 3008

Administrative practice and procedure, Courts.

39 CFR Parts 3010, 3020, and 3035

Administrative practice and procedure, Postal Service.

39 CFR Parts 3015, 3025, 3030, and 3031

Administrative practice and procedure.

39 CFR Part 3017

Administrative practice and procedure, Postal Service, Treaties.

39 CFR Part 3032

Administrative practice and procedure, Postal Service, Trademarks.

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3055 and 3060

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

■ 1. Under the authority of 39 U.S.C. 503, redesignate the parts in the ''Current part'' column as the parts in the ''New part'' column as shown in the following table:

Current part	New part
3035	3045
3020	3040
3015	3035
3030	3022
3010	3030
3025	3021
3017	3025
3032	3024
3031	3023
3005	3013
3008	3012
3007	3011
3001	3010
3004	3006
3003	3005
3000	3001
3002	3000

SUBCHAPTER A—THE COMMISSION

■ 2. Designate newly redesignated parts 3000 and 3001 as subchapter A under the heading set forth above.

SUBCHAPTER B—SEEKING INFORMATION FROM THE COMMISSION

■ 3. Designate newly redesignated parts 3005 and 3006 as subchapter B under the heading set forth above.

SUBCHAPTER C—GENERAL RULES OF PRACTICE FOR PROCEEDINGS BEFORE THE COMMISSION

■ 4. Designate newly redesignated parts 3010 through 3013 as subchapter C under the heading set forth above.

SUBCHAPTER D—SPECIAL RULES OF PRACTICE FOR SPECIFIC PROCEEDING TYPES

■ 5. Designate newly redesignated parts 3020 through 3025 as subchapter D under the heading set forth above.

SUBCHAPTER E—REGULATIONS GOVERNING MARKET DOMINANT PRODUCTS, COMPETITIVE PRODUCTS, PRODUCT LISTS, AND MARKET TESTS

■ 6. Designate newly redesignated parts 3030 through 3045 as subchapter E under the heading set forth above.

SUBCHAPTER F—PERIODIC REPORTING, ACCOUNTING PRACTICES, AND TAX RULES

■ 7. Designate newly redesignated parts 3050 through 3099 as subchapter F under the heading set forth above.

PART 3040—PRODUCT LISTS

■ 8. Under the authority of 39 U.S.C. 503, for newly redesignated part 3040, redesignate §§ 3020.1 through 3020.112 as §§ 3040.101 through 3040.212, respectively.

PART 3035—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

■ 9. Under the authority of 39 U.S.C. 503, for newly redesignated part 3035, redesignate §§ 3015.1 through 3015.7 as §§ 3035.101 through 3035.107, respectively.

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

■ 10. Under the authority of 39 U.S.C. 503, for newly redesignated part 3030, redesignate §§ 3010.1 through 3010.66 as §§ 3030.501 through 3030.566, respectively.

PART 3025—PROCEDURES RELATED TO COMMISSION VIEWS

■ 11. Under the authority of 39 U.S.C. 503, for newly redesignated part 3025, redesignate §§ 3017.1 through 3017.5 as §§ 3025.101 through 3025.105, respectively.

PART 3005—PRIVACY ACT RULES

■ 12. Under the authority of 39 U.S.C. 503, for newly redesignated part 3005, redesignate §§ 3033.1 through 3033.7 as §§ 3005.101 through 3005.107, respectively.

PART 3001—STANDARDS OF CONDUCT

■ 13. Under the authority of 39 U.S.C. 503, for newly redesignated part 3001, redesignate §§ 3000.5 through 3000.55 as §§ 3001.105 through 3001.155, respectively.

PART 3000—ORGANIZATION

■ 14. Under the authority of 39 U.S.C. 503, for newly redesignated part 3000, redesignate §§ 3002.1 through 3002.16 as §§ 3002.101 through 3002.116, respectively.

PART 3000—THE COMMISSION AND ITS OFFICES

■ 15. The authority for newly redesignated part 3000 continues to read as follows:

Authority: 39 U.S.C. 503; 5 U.S.C. 552.

■ 16. Revise heading for newly redesignated part 3000 to read as set forth above.

■ 17. Amend newly redesignated § 3000.102 by revising paragraph (b) to read as follows:

§ 3000.102 Statutory functions.

* * * * *

(b) *Public participation.* Interested persons may participate in proceedings before the Commission as described in part 3010, subpart C of this chapter. Pursuant to 39 U.S.C. 3662(a) and part 3022 of this chapter, any interested person may lodge rate and service complaints with the Commission. Persons served by a post office that the Postal Service decides to close or consolidate may appeal such determinations in accordance with 39 U.S.C. 404(d) and part 3021 of this chapter.

■ 18. Amend newly redesignated § 3000.110 by revising paragraphs (b) and (c) to read as follows:

§ 3000.110 The Commission and its offices.

* * * * *

(b) *The Chairman and Vice Chairman.* The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the offices and employees of the Commission. The Chairman has the administrative duty to preside at the meetings and sessions of the Commission and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission shall elect annually a member of the Commission to serve as Vice Chairman of the Commission for a term of one year or until a successor is elected. In case of a vacancy in the Office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, the Vice Chairman, unless otherwise directed by the Chairman, shall have the administrative responsibilities and duties of the Chairman during the period of vacancy, absence, or inability.

(c) The Commission's offices are located at 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. On these premises, the Commission maintains offices for Commissioners and staff; a docket room where documents may be filed with the Commission pursuant to part 3010, subpart B of this chapter and examined by interested persons, a public reading room where the Commission's public records are available for inspection and copying; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the internet, on its website at *http://www.prc.gov.*

■ 19. Amend newly redesignated § 3000.112 by revising paragraph (b) to read as follows:

§ 3000.112 Office of Accountability and Compliance.

* * * * *

(b) The Office of Accountability and Compliance provides the analytic support to the Commission for the review of rate changes, negotiated service agreements, classification of products, the Annual Compliance Determination, the Annual Report, changes to postal services, post office closings and other issues which come before the Commission. The functional areas of expertise within this office are:

* * * * *

■ 20. Amend newly redesignated § 3000.115 by revising paragraph (b)(2) to read as follows:

§ 3000.115 Office of Public Affairs and Government Relations.

* * * * *

(b) * * *

(2) *Consumer Affairs.* As the principal source of outreach and education to the public, the Office of Public Affairs and Government Relations provides information to postal consumers and assists in the resolution of rate and service inquiries from members of the public pursuant to part 3023 of this chapter. It supports the impartial resolution of those inquiries through use of the Postal Service's Office of Consumer Advocate and reports the results to the Commission. The Office of Public Affairs and Government Relations also utilizes procedures available under the Commission's rules and applicable law to assist relevant stakeholders in appeals of Postal Service decisions to close or consolidate individual post offices; maintains a record of service-related inquiries; and posts calendar updates and other public information on the Commission's website.

* * * * *

PART 3001—EMPLOYEE STANDARDS OF CONDUCT

■ 21. The authority for newly redesignated part 3001 continues to read as follows:

Authority: 39 U.S.C. 503, 504, 3603; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396; 5 CFR parts 2634 and 2635.

■ 22. Revise heading of newly redesignated part 3001 to read as set forth above.

■ 23. Amend newly redesignated § 3001.105 by revising paragraph (b) to read as follows:

§ 3001.105 Post-employment restrictions.

* * * * *

(b) No former employee of the Commission may within one year after the individual's employment has ceased, practice before or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the official responsibility of such individual, as defined in 18 U.S.C. 202(b), while in the service of the Commission.

■ 24. Amend newly redesignated § 3001.150 by revising paragraph (b) to read as follows:

§ 3001.150 Ex parte communications prohibited.

* * * * *

(b) Additional ex parte communications requirements, applicable to specific docket types, are described in part 3012 of this chapter.

PART 3005—PRIVACY ACT RULES

■ 25. The authority for newly redesignated part 3005 continues to read as follows:

Authority Privacy Act of 1974 (Pub. L. 93–579), 5 U.S.C. 552a.

■ 26. Amend newly redesignated § 3005.103 by revising paragraphs (a)(1) through (3) and (c)(3) and (4) to read as follows:

§ 3005.103 Procedures for requesting inspection, copying, or correction.

(a) * * *

(1) Wishes to know whether a Commission system of records contains a record about the individual,

(2) Seeks access to a Commission record about the individual that is maintained in a system of records (including the accounting of disclosures), or

(3) Seeks to amend a record about the individual that is maintained in a system of records, may file a written request with the chief administrative officer of the Commission at the Commission's current address (901 New York Avenue NW, Suite 200, Washington, DC 20268–0001). The request should state on the outside of the envelope and in the request that it is a Privacy Act request.

* * * * *

(c) * * *

(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of the individual's record in the presence of that individual;

(4) Who files a request by mail must include the individual's date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver's license, employee identification card, or Medicare card; and

* * * * *

PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

■ 27. The authority for newly redesignated part 3006 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

■ 28. Amend newly redesignated § 3006.1 by revising paragraphs (b) and (c) to read as follows:

§ 3006.1 Purpose.

* * * * *

(b) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3000 of this chapter, and on the Commission's website at *http://www.prc.gov.* The Commission's guide to FOIA, all required FOIA indexes, and recent annual FOIA reports are also available on the website.

(c) Section 3006.10 identifies records that the Commission has determined to be public.

■ 29. Amend newly redesignated § 3006.2 by revising paragraph (b) to read as follows:

§ 3006.2 Presumption of openness.

* * * * *

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, as enumerated in § 3006.11, or disclosure is otherwise prohibited by law.

* * * * *

■ 30. Amend newly redesignated § 3006.10 by revising paragraph (a) introductory text to read as follows:

§ 3006.10 Public records.

(a) Except as provided in § 3006.11 and in § 3011.200 of this chapter, the public records of the Commission include all submissions and filings as follows:

* * * * *

■ 31. Amend newly redesignated § 3006.12 by revising paragraph (b) to read as follows:

§ 3006.12 Reading room.

* * * * *

(b) The records available for public inspection and printing include, for example, decisions; reports; opinions; orders; notices; findings; determinations; statements of policy; copies of selected records released under FOIA; indexes required to be maintained under FOIA; and records described in § 3006.10 relating to any matter or proceeding before the Commission.

* * * * *

■ 32. Amend newly redesignated § 3006.30 by revising paragraphs (b), (d) introductory text, (d)(2), and (e)(2) to read as follows:

§ 3006.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

* * * * *

(b) *Requesting records subject to the Privacy Act.* A request by an individual for the individual's own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3005 of this chapter. However, if there is any record that the Commission need not release under the Privacy Act, the Commission will also consider the request under FOIA, and will release the record if FOIA requires it.

* * * * *

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. In all instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in subpart B of part 3011 of this chapter.

* * * * *

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

(e) * * *

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

■ 33. Amend newly redesignated § 3006.40 by revising paragraph (a)(6) to read as follows:

§ 3006.40 Hard copy requests for records and for expedited processing.

(a) * * *

(6) Identify the request category under § 3006.51; and

* * * * *

■ 34. Amend newly redesignated § 3006.41 by revising paragraph (a)(4) to read as follows:

§ 3006.41 Electronic requests for records and for expedited processing.

(a) * * *

(4) Identify the request category under § 3006.51; and

* * * * *

■ 35. Amend newly redesignated § 3006.43 by revising paragraph (f) to read as follows:

§ 3006.43 Response to requests.

* * * * *

(f) Where a compelling need is not shown in an expedited request as specified in § 3006.41(b)(1), the Commission may grant requests for expedited processing at its discretion.

■ 36. Amend newly redesignated § 3006.51 by revising paragraph (b) to read as follows:

§ 3006.51 Fees—request category.

* * * * *

(b) *Privacy Act.* A request by an individual for the individual's own records in a system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3005 of this chapter.

■ 37. Amend newly redesignated § 3006.52 by revising paragraphs (e) introductory text and (e)(1) to read as follows:

§ 3006.52 Fees—general provisions.

* * * * *

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3006.43 and 3006.44, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3006.45(a), and the Commission completes its response within the extension of time provided under that section; or

* * * * *

■ 38. Amend newly redesignated § 3006.53 by revising paragraph (b) to read as follows:

§ 3006.53 Fee schedule.

* * * * *

(b) In addition to the fee waiver provisions of § 3006.52(d), fees may be waived at the discretion of the Commission.

■ 39. Amend newly redesignated § 3006.54 by revising paragraph (a)(2) to read as follows:

§ 3006.54 Procedure for assessing and collecting fees.

(a) * * *

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3006.43) begin only after such payment has been received.

* * * * *

■ 40. Revise newly redesignated § 3006.61 to read as follows:

§ 3006.61 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations or the individual's designee as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via email at *PRC-PAGR@prc.gov* or telephone at 202–789–6800.

■ 41. Amend newly redesignated § 3006.70 by revising paragraphs (a) through (c) to read as follows:

§ 3006.70 Submission of non-public materials by a person other than the Postal Service.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in subpart B of part 3011 of this chapter.

(b) *Notice of request.* Except as provided in § 3006.30(d), if a FOIA request seeks materials designated as non-public materials, the Commission will provide the submitter with notice of the request. The Commission may also provide notice when it has reason to believe that materials submitted by a person other than the Postal Service are possibly exempt from disclosure and may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within seven days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for non-public treatment pursuant to § 3011.201 of this chapter, to the disclosure of the information.

* * * * *

■ 42. Add new part 3007, consisting of § 3007.100, to subchapter B to read as follows:

PART 3007—COMMISSION MEETINGS

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

§ 3007.100 Public attendance at Commission meetings.

(a) *Definition. Commission meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(b) *Open Commission meetings.* (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (d) of this section, every portion of every meeting of the Commission shall be open to public observation.

(2) Members of the public may not participate in open meetings. They may record the proceedings, provided they use battery-operated recording devices at their seats. Cameras may be used by observers to photograph proceedings, provided it is done from their seats and no flash or lighting equipment is used. Persons may electronically record or photograph a meeting, as long as such activity does not impede or disturb the members of the Commission in the performance of their duties, or members of the public attempting to observe, or to record or photograph, the Commission meeting.

(c) *Physical arrangements for open meetings.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission meetings.

(d) *Closed Commission meetings.* Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (b) of this section shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (f) and (g) of this section shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the Commission properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(1) Disclose matters that:

(i) Are specifically authorized under criteria established by an Executive order to be kept secret in the interests

of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order.

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(i) Requires the matter to be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that this paragraph (d)(9) shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or appellate proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(e) *Procedures for closing meetings.* (1) Action under paragraph (d) of this section shall be taken only when three Commissioners vote to take such action. A separate vote of the Commissioners shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to paragraph (d) of this section, or with respect to any information which is proposed to be withheld under paragraph (d) of this section. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (d)(5), (6), or (7) of this section, the Commission upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (e)(1) or (2) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Commission shall, within one day of the vote taken pursuant to paragraph (e)(1) or (2) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any person may protest a Commission decision to hold a closed meeting under paragraph (e)(1) or (2) of this section by filing a motion to open the meeting. Such motion shall be addressed to the Commission and shall set forth with particularity the statutory or other authority relied upon, the reasons for which the movant believes the meeting should not be closed, and the reasons for which the movant believes that the public interest requires the meeting to be open. Such motion shall be filed with the Secretary no later than 24 hours prior to the time for which the closed meeting is scheduled.

(5) The Commission has determined that a majority of its meetings may be closed to the public pursuant to paragraph (d)(4), (8) or (10) of this section or any combination thereof. Therefore, pursuant to 5 U.S.C. 552b(d)(4), Commission meetings shall be closed to the public pursuant to paragraph (d)(4), (8) or (10) of this section or any combination thereof when three Commissioners vote by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each Commissioner on the question, is made available to the public. The provisions of paragraphs (e)(1) through (3) and (f) of this section shall not apply to any portion of a meeting to which paragraph (e)(5) of this section applies: Provided, that the Commission shall, except to the extent that such information is exempt from disclosure under the provisions of paragraph (d) of this section, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(f) *Scheduling and public announcement.* (1) In the case of each meeting, the Commission shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless three Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Commission shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (f)(1) of this section only if the Commission publicly announces such change at the earliest practicable time.

The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement required by paragraph (f)(1) of this section only if:

(i) Three Commissioners determine by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible; and

(ii) The Commission publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this paragraph (f), notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the **Federal Register**.

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the reception area of the Postal Regulatory Commission located at 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001;

(ii) Mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(iii) Operating a recorded telephone announcement, giving the announcement; and

(iv) Any other means which the Secretary believes will serve to further inform any persons who might be interested.

(g) *Certification of closed meetings; transcripts, electronic recordings, and minutes.* (1) Before any meeting to be closed pursuant to paragraphs (d)(1) through (10) of this section, the General Counsel of the Commission, or in the General Counsel's absence, the senior advisory staff attorney available, should publicly certify that, in the individual's opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (d)(8) or (10) of this section, the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The Commission shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (g)(1) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines by a majority vote of all its members contains information which may be withheld under paragraph (d) of this section, and is not required by the public interest to be made available. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(h) *Requests to open or close Commission meetings.* (1)(i) Any person may request in writing that the Commission open to public observation discussion of a matter which it has earlier decided to close.

(ii) Such requests shall be captioned ''Request to open ____ (date) Commission meeting on item ____ (number or description).'' The request shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests must be received by the Office of Secretary and Administration no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Office of Secretary and Administration ten working days after the meeting.

(2)(i) Any person whose interests may be directly affected may request in writing that the Commission close to public observation discussion of a matter which it has earlier decided to open as provided for in paragraph (e)(2) of this section.

(ii) Such requests shall be captioned ''Request to Close ____ (date) Commission meeting on item ____ (number or description),'' shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests should be filed with the Office of Secretary and Administration as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the Office of Secretary and Administration no later than the time scheduled for the meeting to which such a request pertains.

(3) The Secretary shall retain one copy of timely requests and forward one copy to each Commissioner, one copy to the interested Office, and two copies to the Docket Section, one for entry in the appropriate docket file, if any, and one to be posted on the Public Notice Board located in that section as an attachment to the Notice of Meeting to which it pertains.

(4) Pleadings replying to requests to open or close shall not be accepted.

(5) Any Commissioner may require that the Commission vote upon the request to open or close. If the request is supported by the votes of a majority of the agency membership, notice of change in meeting shall be issued and the Secretary shall immediately notify the requester and, before the close of business the next working day, have posted such vote and other material required by paragraphs (e) and (f) of this section on the Commission's Public Notice Board.

(6) If no Commissioner requests that a vote be taken on a request to open or close a Commission meeting, the Secretary shall by the close of the next working day after the meeting to which such request pertains certify that no vote was taken. The Secretary shall forward one copy of that certification to the requester and two copies of that certification to the Docket Section, one

to be placed in the appropriate docket file, if any, and one to be posted on the Public Notice Board, where it will be displayed for one week.

■ 43. Revise newly redesignated part 3010 to read as follows:

PART 3010—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Provisions

Sec.

Subpart B—Filing Requirements

Subpart C—Participation in Commission Proceedings

Subpart D—Notices, Motions, and Information Requests

Subpart E—Proceedings Using Notice and Comment Procedures

Subpart F—Proceedings with an Opportunity for a Hearing on the Record

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—General Provisions

§ 3010.100 Applicability and scope of rules.

(a) The rules in this part apply to practice before the Postal Regulatory Commission.

(b) When a general rule conflicts with a rule governing a specific practice area, the rule governing the specific practice area shall take precedence.

(c) The rules in this part shall be liberally construed to secure a just and speedy determination of issues. They permit the informal disposition of any matter for which formal procedures are not specifically required by statute.

(d) Except when specifically required by statute, the rules in this part may be waived for good cause and appropriate alternative procedures may be prescribed.

(e) The rules in this part shall be referred to as the ''rules of practice.'' Rules are to be cited using only the numbers and letters to the right of the decimal point. For example, paragraph (a) of ''§ 3010.120 Filing material with the Commission'' shall be referred to as ''section 120(a) of the rules of practice (39 CFR 3–1–.120(a))'' or as ''rule 120(a)'' (39 CFR 3010.120(a)).

§ 3010.101 Definitions.

(a) *Act* means title 39 of the United States Code, as amended.

(b) *Commission* or *Commissioner* means, respectively, the Postal Regulatory Commission established by the Act or a member thereof. The Commission is located at 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. The Commission's regular business hours are from 8 a.m. to 4:30 p.m. Eastern Time, except for Saturdays, Sundays, and Federal holidays.

(c) *Complainant* means a person who files a complaint with the Commission pursuant to section 3662 of the Act in the form and manner hereinafter prescribed.

(d) *Effective date,* when used with respect to a notice, order, ruling, or other document issued by the Commission or an officer thereof (excluding documents issued for publication in the **Federal Register**), means the date the filing is posted on the Daily Listing page of the Commission's website unless otherwise specifically provided.

(e) *Hearing on the record* means a hearing conducted under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission for a hearing on the record.

(f) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, which provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract. A rate associated with a negotiated service agreement is not a rate of general applicability.

(g) *Participant* means any person who participates, or seeks to participate, in a proceeding before the Commission.

(h) *Party* means the Postal Service, the Public Representative, a complainant, or a person who has intervened in a proceeding docketed for a hearing on the record before the Commission.

(i) *Person* means an individual, a partnership, corporation, limited liability company, trust, unincorporated association, public or private organization, or governmental entity.

(j) *Petitioner* means a person who is permitted by section 404(d)(5) of the Act to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(k) *Postal Service* means the United States Postal Service established by the Act.

(l) *Postal service* refers to the delivery of letters, printed matter, or mailable

packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

(m) *Presiding officer* means a person designated by the Chairman of the Commission or the Commission to preside over a Commission proceeding or over a hearing held on the record before the Commission.

(n) *Proceeding* means a Commission process initiated by the issuance of a notice or order that establishes a docket for the consideration of a matter before the Commission.

(o) *Product* means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.

(p) *Public Representative* or *PR* means an officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

(q) *Rate or class of general applicability* means a rate or class that is available to all mailers equally on the same terms and conditions.

(r) *Record* means all documents and other material in a docket, including pleadings, testimony, exhibits, library references, transcripts of oral testimony or statements given or made during a hearing, comments, briefs, and *in camera* material, whether or not relied upon by the Commission or presiding officer in reaching a decision.

(s) *Secretary* means the Secretary of the Commission, the Acting Secretary, or the Secretary's designee.

(t) *Small business concern* means a for-profit business entity that:

(1) Is independently owned and operated;

(2) Is not dominant in its field of operation;

(3) Has a place of business located in the United States;

(4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and

(5) Together with its affiliates, qualifies as *small* in its primary industry under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201 based on annual receipts or number of employees.

(u) *Website* means the Commission's website located at *https://www.prc.gov.*

§ 3010.102 Commission dockets.

(a) The Commission may initiate a proceeding by issuing a notice or order that establishes a docket in which a proceeding is to be conducted.

(b) When permitted by statute or regulation, any person may seek the initiation of a proceeding by filing a request with the Commission that complies with the rules governing the type of proceeding being requested.

(c) The Secretary shall maintain a docket for all matters that come before the Commission.

(d)(1) The Secretary shall assign docket designations to each matter that comes before the Commission that reflect the nature of the matter, set forth the fiscal year in which the matter came before the Commission, and where applicable, the sequential number of the docket type within the fiscal year. Available docket types are:

(i) Appeal of a Post Office Closing (A);

(ii) Annual Compliance Report (ACR);

(iii) Complaint (C);

(iv) Competitive Product Rates (CP);

(v) General (G);

(vi) International Mail (IM);

(vii) Mail Classification (MC);

(viii) Market Test (MT);

(ix) Change in the Nature of Postal Services (N);

(x) Public Inquiry (PI);

(xi) Market Dominant Rates (R);

(xii) Rulemaking (RM);

(xiii) Special Studies (SS); and

(xiv) Annual Review of Tax Calculation (T).

(2) The Commission may modify the list of docket types and document formats without prior notice.

(e) The Secretary's assignment of a docket designation does not, by itself, establish a docket or initiate a proceeding. A docket is formally established and proceedings initiated only by the issuance of a Commission notice or order except for certain negotiated service agreements for which the authority to establish a docket and initiate a proceeding by issuance of a Secretary's notice has been delegated to the Secretary.

(f) The substance of the matter presented to the Commission, not the assigned docket type, shall govern the procedural requirements for the docket.

(g) Material filed with the Commission following the Secretary's assignment of a docket designation shall include the assigned docket designation.

(h) Public material filed within a docket may be viewed at the Commission's Docket Section during regular business hours. Public documents filed in a docket that appear in electronic format may also be accessed remotely via the Commission's website. Confidential material filed under seal in a docket may only be accessed with prior authorization. Part 3011 of this chapter sets forth the procedures for obtaining such authorization. Persons who wish to access confidential material should contact the Commission's Docket Section for the appropriate mode for transmitting material filed under seal.

(i) Active dockets may only be closed by the Commission.

§ 3010.103 Procedural schedules shall be established and may be periodically modified for each matter that is assigned a docket designation.

Procedural schedules shall be established and may be periodically modified for each matter that is assigned a docket designation.

§ 3010.104 Consolidation and severance of proceedings.

The Commission may order proceedings involving related issues or facts to be consolidated for consideration of any or all matters at issue in such proceedings. The Commission may sever proceedings which have been consolidated or order separate proceedings on any issue presented if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3010.105 Consideration of matters before the Commission.

(a) Unless it orders otherwise, the Commission shall sit *en banc* in all matters that come before it. In those proceedings in which a presiding officer is appointed, the Commission will continue to sit *en banc,* unless modified by Commission notice or order, with the presiding officer responsible for those matters within the scope of the presiding officer's authority.

(b) A decision to establish a docket (other than certain negotiated service agreement dockets), close an active docket, or reach a final decision in any docket shall be by majority vote of the Commissioners then in office.

§ 3010.106 Presiding officers.

(a) *Designation of presiding officers.* The Chairman, in consultation with all other Commissioners then in office, may designate any Commissioner, including the Chairman, to act as presiding officer over any matter before the Commission. Subject to approval by majority vote of all Commissioners then in office, the Chairman may also designate any member of the Commission's staff, an Administrative Law Judge employed by the Commission for a specific proceeding, or any person under contract with the Commission to serve as presiding officer over any matter before the Commission.

(b) *Notice of designation.* The Secretary shall issue a notice of any decision to designate a presiding officer. The notice shall identify the presiding officer and the date of appointment.

Any expansion or limitation on the presiding officer's authority, or specific direction to a presiding officer (such as specific direction to issue an intermediate decision for the Commission's consideration) not specified in this section shall be included in the notice.

(c) *Authority delegated.* Presiding officers shall have the authority, within the Commission's powers and subject to its published rules to:

(1) Regulate the course of a proceeding before the Commission, including ruling on all matters not specifically reserved for the Commission, either orally during a hearing or by issuing written presiding officer rulings;

(2) Regulate the course of a public hearing, including the recessing, reconvening, and adjournment thereof;

(3) Issue presiding officer information requests;

(4) Administer oaths and affirmations;

(5) Issue subpoenas authorized by law (limited to Commissioners and Administrative Law Judges designated as presiding officers);

(6) Rule upon offers of proof and receive relevant evidence;

(7) Take or authorize that depositions be taken as provided in § 3010.324;

(8) Hold appropriate conferences before or during hearings and to rule on matters raised at such conferences, including prehearing conferences held pursuant to § 3010.302;

(9) Dispose of procedural requests or similar matters not specifically reserved for the Commission;

(10) Certify, within their discretion, or upon direction of the Commission, any question to the Commission for its consideration and disposition;

(11) Submit an intermediate decision in accordance with § 3010.335, when directed; and

(12) Take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(d) *Conduct of hearings.* It is the duty of the presiding officer to conduct fair and impartial hearings and to maintain order. Any disregard by participants or counsel of presiding officer rulings on matters of order or procedure shall be noted on the record, and where the presiding officer deems it necessary shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Commission a report thereon, together with recommendations, and in the presiding officer's discretion, suspend the hearing.

(e) *Disqualification.* A presiding officer may withdraw from a proceeding when necessary due to disqualification, or may be removed by the Commission for good cause.

§ 3010.107 Appeals from interlocutory rulings by presiding officers.

(a) *General policy.* The Commission will not review interlocutory rulings of a presiding officer except in extraordinary circumstances.

(b) *Appeals certified by the presiding officer.* (1) Rulings of the presiding officer may be appealed to the Commission when the presiding officer certifies in writing that an interlocutory appeal is warranted. The presiding officer shall not certify an appeal unless the officer finds that:

(i) The ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion; and

(ii) An immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall be made by motion within five days after the presiding officer's ruling has been issued. The request shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraphs (b)(1)(i) and (ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant's position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be adduced by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal to the Commission.

(c) *Appeals not certified by the presiding officer.* A participant may request Commission review of a presiding officer's decision denying certification of an appeal by motion within five days of the decision. If the presiding officer fails to act on a request for certification within 15 days of the issuance of the ruling in question, the participant seeking certification may apply for review by the Commission within 20 days of the ruling in question. Unless the Commission directs otherwise, its review of the application for review will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

(d) *Action by the Commission.* (1) The Commission may dismiss an appeal certified by the presiding officer if it determines that:

(i) The objection to the ruling should be deferred until the Commission's consideration of the entire proceeding; or

(ii) Interlocutory review is otherwise not warranted or appropriate under the circumstances.

(2) When the presiding officer declines to certify an appeal, the Commission will not permit an interlocutory appeal unless it determines:

(i) That the presiding officer should have certified the matter;

(ii) That extraordinary circumstances exist; and

(iii) That prompt Commission decision is necessary to prevent grave detriment to the public interest.

(3) If the Commission fails to issue an order permitting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review, the appeal shall be deemed denied. If the Commission issues an order permitting an appeal, it may rule upon the merits of the appeal in that order or at a later time.

(e) *Effect of appeals.* Unless the presiding officer or the Commission so orders, the certification of an appeal or the filing of an application for review shall not stay the proceeding or the effectiveness of any ruling.

(f) *Review at conclusion of proceeding.* If the Commission does not entertain an interlocutory appeal of a presiding officer's ruling, objection to the ruling may be raised:

(1) In briefs to the presiding officer or the Commission at the conclusion of hearings on the record; or

(2) By the deadline for submission of comments or reply comments, whichever is later, in all other proceedings in which a hearing on the record is not held.

§ 3010.108 Computation of time.

(a) In computing time periods, the term ''day'' shall mean calendar day.

(b) Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule, presiding officer ruling, or regulation of the Commission

or a presiding officer, the day of the act, event, or default after which a designated period of time begins to run is not to be included.

(c) The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal holiday, or a day on which the Commission is not continuously open from 8 a.m. to 4:30 p.m. or on which the Commission's docketing system is not accessible continuously during that time. In any such case, the applicable time period shall run until the end of the next full business day that the Commission is open and its docketing system is accessible.

(d) Except in proceedings to consider changes in the nature of postal services conducted under part 3020 of this chapter, in computing a period of time which is five days or less, all Saturdays, Sundays, Federal holidays, or days on which the Commission is not continuously open from 8 a.m. to 4:30 p.m. or on which the Commission's docketing system is not accessible continuously during that time are to be excluded.

§ 3010.109 Automatic closure of inactive dockets.

(a) *Automatic closure.* The Commission shall automatically close a docket in which there has been no activity of record by any person for 12 consecutive months, except dockets in which further action by the Commission is required by statute or regulation, or dockets for which the Commission finds good cause to remain open.

(b) *Notice of closure.* Each month, the Commission shall post on its website a list of dockets that will be subject to automatic closure during the following calendar month and will include the date on which the docket will automatically close.

(c) *Motions to stay automatic closure.* (1) Persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure of a docket and request that the docket remain open for a specified term not to exceed 12 months. Motions to stay automatic closure must be filed at least 15 days prior to the automatic closure date.

(2) The Commission may order a docket remain open for a specified term not to exceed 12 months and must file such order at least 15 days prior to the automatic closure date.

(d) *Motions to reopen automatically closed dockets.* (1) If, at any time after a docket has been automatically closed, persons, including the Postal Service or a Public Representative, may file a motion to reopen the docket and must set forth with particularity good cause for reopening the docket.

(2) The Commission may order a closed docket to be reopened, and must set forth the basis for reopening the docket.

Subpart B—Filing Requirements

§ 3010.120 Filing material with the Commission.

(a) All material filed with the Commission shall be transmitted to the Commission in electronic format using the Filing Online system available over the internet through the Commission's website at *http://www.prc.gov.* The material must satisfy the Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which shall also be accessible on the Commission's website. The exceptions to this rule are:

(1) Material that cannot reasonably be converted to electronic format;

(2) Confidential material filed under seal pursuant to part 3011 of this chapter shall not be transmitted electronically using the Filing Online system or any other electronic filing system unless authorized in advance by the Secretary;

(3) Hardcopy material filed by persons who do not have the ability to submit material using the Filing Online system and who files not more than ten pages of material with the Commission in any one calendar year;

(4) Hardcopy material filed by persons participating in proceedings that consider the appeal of a Postal Service determination to close or consolidate a post office, other than the Postal Service, that do not have the ability to submit material using the internet; and

(5) Hardcopy material filed in docketed proceedings with the approval of the Secretary for good cause shown.

(b) Material subject to the exceptions specified in paragraph (a) of this section may be filed either by mailing or by hand delivery during regular business hours to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. The Secretary has authority to approve the use of secure alternative electronic filing systems for confidential material filed under seal. The Secretary also has authority to approve the use of alternative electronic filing systems for non-confidential material on a case-by-case basis when necessary to facilitate efficient docketing operations.

§ 3010.121 Filing Online system.

(a) Only registered users of the Filing Online system may file material using the Filing Online system. Both temporary and permanent account registrations are available. Information for establishing a Filing Online account may be obtained on the Commission's website at *http://www.prc.gov.*

(b) A temporary account allows a user to file materials immediately, but expires after 35 days. The purpose of a temporary account is to permit persons to file comments solicited by the Commission on a one-time or infrequent basis, or to file notices of intervention where there is limited time in which to establish a permanent account. A temporary account also may be used on an extraordinary basis for good cause shown.

(c) A permanent account requires the authorization of the Secretary prior to use, but remains active until cancelled. Registration can be in the form of a principal account holder or as an agent of the principal account holder. When a principal account holder is representing the interests of another person, the authority of the principal account holder to represent the person on whose behalf the document is filed must be valid and current, in conformance with § 3010.143. The authority of an agent account holder to submit documents for a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in the principal account holder's authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on the principal account holder's behalf.

(d) Only such material that conforms to the requirements of this part and any other applicable Commission rule or order shall be accepted for filing. In order for material to be accepted using the Filing Online system, it must be submitted to the Commission by a temporary or permanent account holder. Material submitted through the Filing Online system is considered to have been filed on the date indicated on the receipt issued by the Secretary. A filing is accepted when the Secretary, after review, posts the filing on the Daily Listing page of the Commission's website. Material received after the close of regular business hours or on a Saturday, Sunday, Federal holiday or, other day on which the Commission is closed shall be deemed to be filed on the next regular business day.

§ 3010.122 Material filed using method other than the Filing Online system.

(a) *Hardcopy and other forms of material.* A hardcopy document is filed on the date stamped by the Secretary. It

is accepted when the Secretary, after review, posts the document on the Daily Listing page of the Commission's website. Any other form of material filed with the Commission must be accompanied by a hardcopy notice of filing, which describes the material being filed, identifies the person filing the material, and specifies the docket caption and docket number under which the material is being filed. This material is accepted when the Secretary, after review, posts the notice of filing on the Daily Listing page of the Commission's website. Material received after the close of regular business hours or on a Saturday, Sunday, or Federal holiday shall be deemed to be filed on the next regular business day.

(b) *Computer media.* With the prior approval of the Secretary, a participant may submit a document on a compact disk or other media or method approved in advance by the Secretary, simultaneously with the filing of one printed original hardcopy, provided that the stored document is a file generated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

§ 3010.123 Rejected filings.

Any filing that does not comply with an applicable Commission rule or order may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary will attempt to notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document. Any controversies concerning the acceptability of a filing shall be resolved after review by the Office of General Counsel.

§ 3010.124 Form and content of text-based documents filed with the Commission.

(a) *Equivalent paper size.* Each document filed in paper form shall be produced on letter-size paper, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. For a multiple page document, the preference is for the document to be not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. If the document is bound, it shall be bound on the left side. Each document filed in electronic form must be capable of meeting the above requirements when-printed from a text-based pdf formatted file version of the document. Consideration may be given to alternative file formats where necessary.

(b) *Line spacing and font.* The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that tables of content, captions, tables, footnotes and quotations may be single-spaced. Documents shall be submitted in a san-serif font such as Arial (or substantially equivalent). Body text shall be 12 point, except that footnotes and quotations may appear as small as 10 point. Where necessary, special text such as in tables or charts, may appear as small as 9 point. These requirements may be waived on a case-by-case basis, based on both substantial compliance and the readability of the document.

(c) *Caption, title, page numbering, and table of contents.* The caption of each document filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall identify each participant on whose behalf the filing is made and include a brief description of the document or the nature of the relief sought therein (*e.g.,* motion for extension, brief on exceptions, complaint, notice of intervention, answer to complaint). Each page, after the first page, of a document shall be consecutively numbered. Unique page numbers are permissible for introductory material such as cover pages and table of contents, and for appendixes. Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs also *see* § 3010.330.

(d) *Improper matter.* Defamatory, scurrilous, or unethical matter shall not be included in any document filed with the Commission.

(e) *Exception for appeals of post office closings and consolidations.* The requirements of paragraphs (a) through (c) of this section are encouraged, but optional, for participants other than the Postal Service in proceedings to consider the appeal of a Postal Service determination to close or consolidate a post office conducted pursuant to part 3021 of this chapter.

§ 3010.125 Library references.

(a) A library reference is a special type of filing, which is accepted by the Commission for the convenience of the person filing material that is not conducive to typical text based filings. The filing of a document as a library reference is appropriate when interest in the material is limited, when the material constitutes a secondary source that provides background or support for a position or matter, or when references to, or identification of, the material filed as a library reference would be facilitated. Examples of materials that are appropriate for filing as library references include electronic spreadsheets, workpapers in support of primary documents, pre-existing materials, secondary sources such as books or materials that are not readily available elsewhere, or other foundational materials filed in support of a primary document. Whenever possible, library references are to be filed in electronic format. The Commission reserves the right to refuse acceptance of any library reference material in its docket room and its right to take other action to ensure all persons' ability to obtain access to the material.

(b) *Categorization of library references.* To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories:

(1) Category 1—Reporting Systems Material (consisting of library references relating to the Postal Service's statistical cost and revenue reporting systems, and their primary outputs);

(2) Category 2—Witness Foundational Material (consisting of material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses);

(3) Category 3—Reference Material (consisting of previously published material provided for the convenience of the reader, such as books, chapters or other portions of books, articles, reports, manuals, handbooks, guides, and contracts);

(4) Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests);

(5) Category 5—Disassociated Material (consisting of material filed at the request of another, from which the filing party wishes to be disassociated, is not vouching for or sponsoring the material provided);

(6) Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(c) *Labeling.* Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the Commission or presiding officer

establishes. Each library reference shall be identified by a unique identification number. The standard format for an identification number shall be ''[abbreviated name of person filing]–LR–[docket identification]-[optional: NP][sequential number by person filing].'' For example, ''PRC–LR–CP2010–1–NP8'' read right to left would be the eighth (8) non-public (NP) item filed in Docket No. (CP2010–1) as a library reference (LR) by the Postal Regulatory Commission (PRC). Alternative formats may be used when required for clear identification of the material being filed.

(d) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written notice of this action. The notice shall:

(1) Set forth the reason(s) why the material is being designated as a library reference;

(2) Identify the category into which the material falls and describe in detail what the material consists of or represents, noting matters such as the presence of survey results;

(3) Explain in detail how the material relates to the participant's case or to issues in the proceeding;

(4) Identify authors or others materially contributing to substantive aspects of the preparation or development of the library reference;

(5) Identify the documents (such as testimony, exhibits, and an interrogatory) or request to which the library reference relates, to the extent practicable;

(6) Identify other library references or testimony relied upon or referred to in the designated material, to the extent practicable;

(7) Indicate whether the library reference is an update or revision to another library reference and, if it is, clearly identify the predecessor material; and

(8) To the extent feasible, for proceedings scheduled for a hearing on the record, identify portions expected to be entered into the record and the expected sponsor (if the participant filing a library reference anticipates seeking, on its own behalf, to enter all or part of the material contained therein into the evidentiary record). To the extent feasible, in all other proceeding types, identify portions relevant to the proceeding.

(e) *Optional preface or summary.* Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (d)(1) through (8) of this section is encouraged, but optional.

§ 3010.126 Subscription.

(a) Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that the person filing the document has read the document being filed; that the person filing the document knows the contents thereof; that if executed in any representative capacity, the document has been subscribed in the capacity specified in the document with full power and authority so to do; that to the best of the person's knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay. This requirement extends to notices of filing for library references or other material, including the underlying library references or other material to the extent referenced in the notice of filing.

(b) For a document or notice of filing filed via the Filing Online system, the subscription requirement is met when the document or notice of filing is filed with the Commission.

(c) For a hardcopy document or hardcopy notice of filing, the subscription requirement is met by signing in ink, by affixing an electronic signature, or by including the typed name of the individual, authorized office, employee, attorney, or other representative who files the document or notice.

§ 3010.127 Service.

(a) Material filed by a person participating in a docket shall be deemed served on all other persons (except those served by the Secretary pursuant to paragraph (b) of this section) who are participating in the docket as of the date the material, or notice of the material's filing is posted by the Secretary on the Commission's website.

(b) The Secretary shall provide service by First-Class Mail, which is deemed complete upon mailing, to the following persons upon a demonstration of the inability to effectively utilize the Filing Online system (until alternative arrangements are established):

(1) Petitioners in dockets appealing Postal Service determinations to close or consolidate post offices conducted pursuant to part 3021 of this chapter;

(2) Parties that have intervened in proceedings docketed for a hearing on the record; and

(3) Where necessary for fairness and protection of due process, an active participant in a proceeding affecting the substantial rights of that participant.

(c) The Secretary shall maintain a current service list in each proceeding docketed for a hearing on the record which shall include the parties that have intervened in that proceeding and up to two individuals designated for physical service of documents, if necessary, by each party. The service list for each current proceeding will be available on the Commission's website at *http://www.prc.gov.* Each party who has internet access shall be responsible for ensuring that its listing on the Commission's website is accurate and should promptly notify the Secretary of any errors. The Secretary or the Secretary's designee shall be responsible for ensuring the accuracy of listings of any parties who lack internet access.

Subpart C—Participation in Commission Proceedings

§ 3010.140 Opportunity for comment.

Except for proceedings involving an appeal of a Postal Service determination to close or consolidate a post office, any person may submit comments in proceedings before the Commission. An opportunity to provide a reply to comments shall be at the discretion of the Commission, or the presiding officer if one is appointed. The scope and timing of comments and reply comments may be specified by notice, order, or presiding officer's ruling. There is no requirement to intervene in a proceeding as a party in order to submit comments.

§ 3010.141 Appeals of Postal Service determinations to close or consolidate post offices.

(a) Only a person served by the post office in which the Postal Service has issued a decision to close or consolidate a post office may file an appeal of the decision with the Commission.

(b) Any other person served by the same post office under review who desires to participate in the proceeding, or any Postmaster, counsel, agent, or other person authorized or recognized by the Postal Service as such person's representative, may participate in an appeal by submitting comments.

(c) Except for persons identified in paragraph (a) or (b) of this section, the designated Public Representative, and the Postal Service, no other person may participate in a proceeding to consider the appeal of a Postal Service determination to close or consolidate a post office.

(d) Opposition to a person asserting eligibility for participation shall be made within three days of that person's first filing in the proceeding.

§ 3010.142 Parties to hearings on the record.

(a) *Parties to a proceeding.* Any interested person may become a party to proceedings docketed for a hearing on the record by filing a notice of intervention. The Postal Service, and the Public Representative are automatically deemed parties in such proceedings without the need to file a notice of intervention. Persons who file a complaint are also automatically deemed a party to a complaint proceeding without the need to file a notice of intervention. Parties may be provided an opportunity to participate in discovery, file testimony, participate in the written or oral examination of witnesses, file briefs, or present oral argument before the Commission or the presiding officer. Persons that have not intervened may participate in a proceeding docketed for a hearing on the record, but such participation shall be limited to providing comments pursuant to § 3010.140 unless otherwise directed.

(b) *Notices of intervention.* A notice of intervention shall clearly and concisely set forth the nature and extent of the intervenor's interest in the issues to be decided, including the postal services utilized by the intervenor giving rise to the intervenor's interest in the proceeding, and to the extent known, the position of the intervenor with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding. Such notice shall state whether or not the intervenor requests a hearing or in lieu thereof, a conference, and whether or not the intervenor intends to actively participate in a hearing. Such notice shall also include on page one thereof the name and full mailing address of no more than two persons who are to receive service, when necessary, of any documents relating to such proceeding.

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filing by the Commission or its Secretary, unless for good cause shown, the Commission authorizes a late filing. Without a showing for good cause, late intervenors shall be subject to and may not challenge decisions by the Commission or presiding officer made prior to acceptance of the request for late intervention.

(d) *Oppositions.* (1) Except as otherwise provided in paragraph (d)(2) of this section, oppositions to notices of intervention may be filed by any party in the proceeding no later than ten days after the notice of intervention is filed.

(2) Oppositions to notices of interventions in proceedings considering the change in the nature of a postal service pursuant to part 3020 of this chapter may be filed by any party in the proceeding no later than three days after the notice of intervention is filed.

(3) Pending Commission action, an opposition to intervention shall, in all proceedings except those considering the change in the nature of a postal service pursuant to part 3020 of this chapter, delay on a day-for-day basis the date for responses to discovery requests filed by that intervenor.

(e) *Effect of intervention.* A person filing a notice of intervention shall be a party to the proceeding subject, however, to a determination by the Commission, either in response to an opposition, or *sua sponte,* that party status is not appropriate under the Act. Intervenors are also subject to the right of the Commission or the presiding officer as specified in § 3010.104 to require two or more intervenors having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, propounding discovery, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision by the Commission that the intervenor is aggrieved for purposes of perfecting an appeal of any final order of the Commission.

§ 3010.143 Representation of persons.

(a) *By whom.* An individual may participate on the individual's own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, limited liability company, trust, unincorporated association, or governmental entity. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.

(b) *Authority to act.* When an officer or an attorney acting in a representative capacity appears in person, submits a document to the Commission using the Filing Online system as a principal account holder, or signs a paper filed with the Commission, the personal appearance, online submission, or signature, shall constitute a representation to the Commission that that individual is authorized to represent the particular person on whose behalf the individual acts. Any individual appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of the individual's authority to act in such capacity.

(c) *Notice of appearance and withdrawal of appearance.* An individual intending to appear before the Commission or its presiding officer in a representative capacity in a proceeding before the Commission shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless that individual is named in an initial filing of the person whom the individual represents as the individual to whom communications from the Commission in regard to the filing are to be addressed. An individual whose authority to represent a person in a specific Commission proceeding has been terminated shall file a timely notice of withdrawal of appearance with the Commission.

(d) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners by the District of Columbia Rules of Professional Conduct.

(e) *Disqualification and suspension.* After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be grounds for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

§ 3010.144 Limitation of participation by investigative or prosecuting officers.

No officer, employee, or agent of the Commission who participates in a proceeding before the Commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise as to the intermediate decision or Commission decision in that proceeding.

Subpart D—Notices, Motions, and Information Requests

§ 3010.150 Notices.

(a) *Purpose.* A notice is a document that announces a past, present, or future, event or occurrence. A notice shall not be combined with a request for any order or ruling that otherwise should be presented by motion. The Commission or presiding officer shall not combine a notice with a Commission order or a presiding officer's ruling, unless the title of the document clearly states the intent of document being issued.

(b) *Filing requirements.* The title of any document filed as a notice shall contain the word ''notice.'' Additional requirements for the content of specific forms of notices are provided throughout chapter III of this title, where appropriate.

§ 3010.151 Notices and orders initiating proceeding.

(a) Upon a finding that a matter is properly before the Commission, the Commission shall issue a notice and order initiating the proceeding to consider that matter. The rules in this section apply to all proceedings except for:

(1) Proceedings to consider certain negotiated service agreements, which are noticed pursuant to § 3010.152; and

(2) Proceedings to consider the appeal of a Postal Service determination to close or consolidate post office, pursuant to part 3021 of this chapter.

(b) The notice and order shall:

(1) Describe the general nature of the proceeding, *i.e.,* a complaint, a rulemaking, a change in rates, a change in the product lists, a change in the nature of postal services, etc.;

(2) Identify the person(s) requesting the initiation of the docket, if applicable;

(3) Refer to the legal authority under which the proceeding is to be conducted;

(4) Provide a sufficient description of the matter being considered such that the reader is informed of the substance of the proceeding, and provide direction as to where further information may be obtained;

(5) Establish the docket under which the proceeding will be conducted;

(6) Assign a Public Representative to represent the interests of the public, when required;

(7) Describe how interested persons may participate in the proceeding;

(8) Establish procedural deadlines, if known; and

(9) Include such other information as the Commission deems appropriate.

(c) For proceedings docketed for a hearing on the record pursuant to subpart F of this part, the notice and order shall also:

(1) Specify the date by which notices of intervention and requests for hearing must be filed;

(2) Specify the date, time, and place of a prehearing conference or first public hearing, if known; and

(3) Include the procedural schedule provided for under § 3020.110 of this chapter in proceedings to consider changes in the nature of postal services pursuant to part 3020 of this chapter.

(d) The document shall be published in the **Federal Register.**

§ 3010.152 Notices initiating dockets for consideration of negotiated service agreements.

(a) The Secretary shall issue a notice to initiate a docket for each Postal Service request which proposes 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. Multiple requests may be combined into a single notice.

(b) The document shall specify:

(1) The docket number associated with each Postal Service request;

(2) The title of each Postal Service request;

(3) The request's acceptance date;

(4) The legal authority cited by the Postal Service for each request;

(5) The appointment of an officer of the Commission to represent the interests of the general public in the proceeding; and

(6) The comment deadline pertaining to each request.

(c) The document shall be published in the **Federal Register.**

§ 3010.160 Motions.

(a) *Motions.* A motion is an application for a Commission order or ruling by a presiding officer. Motions may be presented by any person who participates in, or who seeks to participate in, a proceeding before the Commission. Motions may be supported by declarations, exhibits, library references, attachments, and other submissions. Motions shall set forth with particularity the ruling or relief sought, the grounds therefore and the statutory and other authorities relied upon. Motions shall be in writing, except that after a hearing has convened, motions may be made orally to the Commission or to the presiding officer if one has been appointed.

(b) *Responses to motions.* A response to a motion may be presented by any person who participates in, or who seeks to participate in, a proceeding before the Commission. Responses shall state with particularity the position of the person submitting the response with regard to the relief or ruling requested in the motion and the grounds therefore and the statutory and other authorities relied upon. Responses to written motions must be filed within seven days after the motion is filed and posted on the Commission's website, or such other deadline as the rules of practice provide or as the Commission or presiding officer may establish. Responses to oral motions made during a hearing may be made orally to the Commission or to the presiding officer if one has been appointed, unless directed to reduce the response to writing for subsequent consideration.

(c) *Replies.* Unless the Commission or presiding officer otherwise provides, no reply to a response or any further responsive document may be filed.

(d) *Rulings.* The Commission or the presiding office may rule on a motion in writing, or orally during a hearing. A ruling may be issued immediately, without waiting for a response, whenever the person propounding the motion asserts that all affected persons have been contacted and agree not to oppose the motion or when the Commission in its discretion determines that immediate action is appropriate.

§ 3010.161 Motions for waiver.

(a) Any person may file a motion requesting that any requirement imposed by regulation, order, ruling, or Commission, Chairman, or presiding officer request be waived.

(b) Motions for waiver will not be entertained unless timely filed so as to permit disposition of the motion prior to the date specified for the requirement for which waiver is requested. The pendency of a motion for waiver does not excuse any person from timely meeting the requirement for which the waiver is requested.

(c) Motions for waiver may be granted in whole or in part to the extent permitted by law upon a showing of good cause and that such waiver will be consistent with the public interest and will not unduly prejudice the interests of other participants.

§ 3010.162 Motions for continuances and extensions of time.

(a) Any person may file a motion requesting the continuance of a hearing or the extension of time for any deadline.

(b) The motion should be filed before the expiration of the specified time for the deadline for preforming the act for

which the continuance or extension is requested.

(c) The motion shall only be granted upon consideration of the potential adverse impact, if any, on other participants and the overall impact on the procedural schedule.

§ 3010.163 Motions for late acceptance.

(a) Any person may file a motion requesting that the Commission or the presiding officer accept any material filed by that person after an established filing deadline.

(b) The motion should be filed prior to or concurrent with the filing of any material filed after the established deadline.

(c) The Commission or the presiding officer are under no obligation to further consider any material filed after an established deadline, unless late acceptance is approved by the Commission or presiding officer. Posting late filed material to the Commission's website alone is not an indication that the material will be considered.

§ 3010.164 Motions to strike.

(a) Any person may, by motion, request that any material be stricken from consideration in any proceeding.

(b) Motions to strike are requests for extraordinary relief that must be supported with justification for why the material should be stricken from consideration. Motions to strike shall not be used as a substitute for rebuttal testimony, briefs, comments, or any other form of pleading.

§ 3010.170 Information requests.

(a) An information request is an informal discovery mechanism used at the discretion of the Commission, the Chairman of the Commission, or a presiding officer to obtain information that will assist the Commission in the conduct of its proceedings, in the preparation of its reports, or in the performance of its functions under title 39 of the United States Code.

(b) Information requests may be used to:

(1) Require the Postal Service in any proceeding, or any party to a Commission hearing on the record, to provide any information, and associated documents or things in its possession or control, or any information, and any associated documents or things that it can obtain through reasonable effort and expense; or

(2) Request that any person other than the Postal Service or a party to a Commission hearing on the record provide any information, and any associated documents or things that it can obtain through reasonable effort and expense.

(c) Information that can be sought by information request includes, but is not limited to, explanations, confirmations, factual descriptions, data, documents, and other materials. Documents refer to hard copy or electronic conveyance of information and may be stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form. Documents include, but are not limited to, writings, notes, graphs, charts, data files, emails, drawings, photographs, and images. Materials include all matter, other than documents, that convey information.

(d) Information requests shall describe the information, documents, or things sought; shall briefly explain the reason for the request; and shall specify a date by which the response(s) shall be due.

(e) Any person may request the issuance of an information request by motion. The motion shall list the information, documents, or things sought; shall explain the reasons the information request should be issued; and shall demonstrate why the information sought is relevant and material to the Commission's duties under title 39 of the United States Code. Upon consideration of the motion and any responses, the Commission, the Chairman of the Commission, or presiding officer may issue an information request that includes some or all of the proposed questions or modified versions of some or all of the proposed questions. Motions that do not result in the issuance of an information request prior to the Commission's final decision in the docket shall be deemed denied.

Subpart E—Proceedings Using Notice and Comment Procedures

§ 3010.200 Applicability.

(a) Except as otherwise provided in this section, the Commission shall conduct proceedings in conformance with the notice and comment procedures of this subpart whenever:

(1) The Commission is considering the issuance, amendment, or repeal of any Commission rule or regulation;

(2) The Commission is seeking information to inform potential future Commission action with or without the issuance of a final decision; or

(3) The Commission in the exercise of its discretion determines it is appropriate.

(b) Unless the Commission orders otherwise, the rules in this subpart shall not apply to proceedings governed by subpart F of this part (Proceedings with an Opportunity for a Hearing on the Record). The rules in this subpart also shall not apply to the following parts of subchapter D of chapter III (Special Rules of Practice for Specific Proceeding Types) of this title: part 3020 (Rules Applicable to Requests for Changes in the Nature of Postal Services) of this chapter, part 3021 (Rules for Appeals of Postal Service Determinations to Close or Consolidate Post Offices) of this chapter, part 3022 (Rules for Complaints) of this chapter, part 3023 (Rules for Rate or Service Inquiries) of this chapter, and part 3024 (Special Rules for Complaints Alleging Violations of 39 U.S.C. 404a) of this chapter.

§ 3010.201 Initiation of a proceeding.

(a) The Commission may on its own motion initiate a proceeding under this subpart by issuing a notice and order initiating proceeding pursuant to § 3010.151.

(b)(1) Any person may request the initiation of a proceeding under this subpart by filing a petition with the Commission pursuant to the filing requirements of subpart B of this part. The petition shall:

(i) Provide the name, address, phone number and other pertinent contact information of the requesting person;

(ii) Identify the subject matter of the petition;

(iii) Provide specific proposals, including specific language, in regard to the subject matter of the petition;

(iv) Provide all facts, views, arguments, and data deemed to support the action requested; and

(v) Describe the impact of the proposal on the person filing the petition, the Postal Service, the mailing community, and the Commission, as applicable.

(2) Upon consideration of the petition, the Commission in its discretion may initiate a proceeding under this subpart by issuing a notice and order initiating proceeding pursuant to § 3010.151. The Commission may reject petitions that are frivolous or duplicative of other Commission efforts, or defer for future consideration otherwise meritorious petitions that have not demonstrated the potential for an immediate impact on the affected person. The Commission shall provide an explanation for the rejection or delay in consideration of any petition.

(c) Subparts A, B, C, and D of this part apply to the initiation and conduct of proceedings under this subpart E.

§ 3010.202 Participation in notice and comment proceedings.

(a) *Comments.* The primary method for participating in notice and comment

proceedings is through the filing of comments in accordance with § 3010.140. The notice and order initiating proceeding filed pursuant to § 3010.151 shall provide the deadline for filing comments, and if provided for, reply comments.

(b) *Information requests.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, issue information requests pursuant to § 3010.170.

(c) *Technical conferences.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, convene one or more off the record technical conferences to consider the matters being considered.

(d) *Oral presentations.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, permit oral presentations regarding the matters being considered.

(e) *Other procedures.* The Commission, the Chairman, or presiding officer may order additional procedures as appropriate.

§ 3010.203 Commission action.

(a) The Commission shall consider all relevant comments and material of record before taking any final action. Any final decision which includes the issuance, amendment, or repeal of a rule or regulation, shall, at a minimum, publish the final rule or regulation in the **Federal Register**.

(b) Any issuance, amendment, or repeal of a rule or regulation will be made effective not less than 30 days from the time it is published in the **Federal Register** except as otherwise specified in paragraph (c) of this section. If the order issuing, amending, or repealing a rule does not specify an effective date, the effective date shall be 30 days after the date on which the Commission's order is published in the **Federal Register**, unless a later date is required by statute or is otherwise specified by the Commission.

(c) For good cause shown by publication with the rule, any issuance, amendment, or repeal of a rule may be made effective in less than 30 days from the time the Commission's order is published in the **Federal Register**.

(d) Rules involving any military, naval or foreign affairs function of the United States; matters relating to agency management or personnel, public property, loans, grants, benefits or contracts; rules granting or recognizing exemption or relieving restriction; rules of organization, procedure or practice; or interpretative rules; and statements of policy may be made effective without regard to the 30-day requirement.

Subpart F—Proceedings with an Opportunity for a Hearing on the Record.

§ 3010.300 Applicability.

The Commission shall conduct proceedings on the record with the opportunity for a hearing subject to this subpart whenever:

(a) The Commission determines that a complaint filed under part 3022 of this chapter raises one or more material issues of fact or law in accordance with § 3022.30 of this chapter and a proceeding on the record with the opportunity for a hearing is necessary;

(b) The Commission determines that the streamlined procedures in part 3020 of this chapter applicable to a Postal Service request to change the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis are not appropriate; or

(c) The Commission in the exercise of its discretion determines it is appropriate.

§ 3010.301 Notice of proceeding.

Whenever the Commission determines that a proceeding will be held on the record with an opportunity for a hearing under this part, it shall publish notice of the proceeding in the **Federal Register** pursuant to § 3010.151.

§ 3010.302 Prehearing conferences.

(a) *Initiation and purposes.* The Commission or the presiding officer, if one has been appointed, may direct the parties in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (e) of this section. Prehearing conference procedures shall be rigorously pursued by all parties.

(b) *Who presides.* The presiding officer, if one has been designated, shall preside over prehearing conferences. If a presiding officer has not been designated or is otherwise unavailable for a prehearing conference, then the ranking Commissioner in attendance shall be considered the presiding officer for that conference. The presiding officer shall open and close each prehearing conference session and shall be responsible for controlling the conduct of the conference.

(c) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may direct that conferences be held off the record, without the presiding officer present. Informal off-the-record conferences shall be presided over by the Public Representative or such other person as the parties may select. At off-the-record conferences, parties shall be expected to reach agreement on those matters, which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held, and in paragraph (e) of this section. A report on the results of off-the-record conferences shall be made to the presiding officer on the record at a time specified by the presiding officer. The presiding officer shall then determine the further prehearing procedures, if any, to be followed.

(d) *Required preparation and cooperation of all parties.* All parties in any proceeding before the Commission are required and expected to come to prehearing conferences fully prepared to discuss in detail and resolve all matters, such as those specified in paragraph (e) of this section, in the notice of the prehearing conference, and in such other notice or agenda as may have been issued by the Commission or the presiding officer. All parties are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives through thorough advance preparation for the prehearing conference, including informal communications between the parties, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any party to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the party with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(e) *Matters to be pursued.* At the prehearing conference, the presiding officer and the parties shall consider and resolve such matters as:

(1) The definition and simplification of the issues, including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any party;

(2) Arrangements for timely completion of discovery from the Postal Service or any other party of

information regarding any issues in the proceeding, prior filings, evidence or pleadings of any party;

(3) Procedures for timely discovery with regard to any future evidentiary filings of any party;

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute;

(5) The possible grouping of parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer;

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

(7) Limitation of the scope of the evidence and the number of witnesses in order to eliminate irrelevant, immaterial, or cumulative and repetitious evidence;

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses;

(9) Division of the proceeding where practicable into two or more phases for separate and, if advisable, simultaneous hearings;

(10) Establishment of dates for the submission and service of such written testimony and exhibits as may be appropriate in advance of the hearing;

(11) The order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible; and

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the parties to the conduct of the entire proceedings off the record.

(f) *Rulings by presiding officer.* (1) The presiding officer at a prehearing conference, shall, irrespective of the consent of the parties, dispose of by ruling:

(i) Any of the procedural matters itemized in paragraph (e) of this section; and

(ii) Such other procedural matters on which the presiding officer is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding.

(2) Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the parties, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified during the hearing to prevent manifest injustice.

§ 3010.303 Hearing format.

(a) In any case noticed for a proceeding to be determined on the record, the Commission or the presiding officer, if one has been appointed, may determine whether to hold a public hearing, or to hold a hearing by written submission of material only. A public hearing may be held if a hearing is requested by any party to the proceeding or if the Commission determines that a hearing is in the public interest. Generally, public hearings provide an opportunity for oral cross-examination of witnesses whereas hearings held by written submission of material only do not.

(b) Once established, requests to change the hearing format may be proposed by motion, or by the Commission's or presiding officer's own motion.

(c) Only representatives of the Commission, parties that have intervened in a proceeding, or persons intending to intervene prior to the deadline for notices of intervention may participate in a public hearing. However, public hearings are generally open to the public for observation. Public hearings may be closed to the public for good cause, or when confidential material is being presented.

§ 3010.304 Scheduling order.

(a) *When issued.* Upon consideration of the outcome of the prehearing conference, if held, and a determination of the need for a public hearing, the Commission, or the presiding officer if one has been appointed, shall issue a scheduling order. The scheduling order may be combined with any other order or ruling that the Commission or the presiding officer may issue. The scheduling order may be periodically modified as warranted.

(b) *Content of scheduling order.* The content of the scheduling order shall be tailored to the specifics of the matter before the Commission, including any requirement for a public hearing. The Commission or the presiding officer shall consider scheduling the following:

(1) A deadline for conclusion of discovery on proponent's direct case;

(2) A deadline to request oral cross-examination of proponent's witnesses;

(3) A deadline for designation of written cross-examination on proponent's direct case;

(4) The time and date for a public hearing on proponent's direct case, or the date and procedures for entering a proponent's direct case into evidence in a hearing by written submission of material only;

(5) A deadline for parties other than the proponent to file testimony in rebuttal to the proponent's direct case;

(6) A deadline for conclusion of discovery on rebuttal testimony;

(7) A deadline to request oral cross-examination of other parties' witnesses;

(8) A deadline for designation of written cross-examination on rebuttal testimony;

(9) The time and date for a public hearing on rebuttal testimony, or the date and procedures for entering rebuttal testimony in a hearing by written submission of material only;

(10) A deadline for the proponent to file testimony in rebuttal to other parties' direct cases;

(11) A deadline for conclusion of discovery on any proponent's rebuttal testimony;

(12) A deadline to request oral cross-examination of proponent's witnesses;

(13) A deadline for designation of written cross-examination on proponent's rebuttal testimony;

(14) The time and date for a public hearing on a proponent's rebuttal testimony, or the date and procedures for entering a proponent's rebuttal testimony in a hearing by written submission of material only;

(15) A deadline for filing briefs;

(16) A deadline for filing reply briefs; and

(17) A deadline for requesting oral argument.

(c) *Witness availability.* Parties shall promptly file notice of potential witness unavailability to appear at any public hearing as soon as known. Witness unavailability will be considered when establishing the initial, or any subsequent, procedural schedules. Once the initial scheduling order is issued, but no later than ten calendar days prior to a scheduled hearing, parties may file notice of preferences for dates and times of witness appearance at any public hearing.

(d) *Subsequent scheduling of public hearings.* At the adjournment of any public hearing (including prehearing conferences), the Commission, or the presiding officer if appointed, shall announce when the hearing will reconvene. If an announcement is not made, the Commission or the presiding

officer shall announce the time, date, and location of the subsequent hearing, or prehearing conference in writing by notice, order, or presiding officer ruling.

§ 3010.310 Discovery—general policy.

(a) Sections 3010.311 through 3010.313 allow discovery reasonably calculated to lead to admissible evidence during a proceeding noticed for hearing on the record. In general, discovery against a party will be scheduled to end prior to the receipt into evidence of that party's direct case. An exception to this procedure shall operate in all proceedings set for hearing when a party needs to obtain information (such as operating procedures or data) available only from the Postal Service. Such discovery requests are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in §§ 3010.311 through 3010.313 are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a party or an officer or agent of a party fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3010.311 through 3010.313, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the parties obtaining the order, or prohibit the disobedient party from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§ 3010.311 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any party may propound to any other party in a proceeding written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter and reasonably calculated to lead to the discovery of admissible evidence in such proceeding, to be answered by the party served, who shall furnish such information as is available to the requesting party. A party through interrogatories may require any other party to identify each person whom the other party expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The party propounding the interrogatories shall file them with the Commission and serve them on the answering party. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the party who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall file the answers with the Commission and serve them on the requesting party within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(c) *Objections.* In the interest of expedition, the grounds for every objection shall be clearly and fully stated. If an objection is made to part of an interrogatory, the part shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections shall be filed with the Commission and served on the requesting party within ten days of the filing of the interrogatories. Any ground not stated in a timely objection is waived unless excused by the Commission or presiding officer for good cause shown.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any party to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is overruled, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed with the Commission and served on the compelling party within seven days of the date of the order compelling an answer or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(f) *Supplemental answers.* The individual or party who has answered interrogatories is under the duty to seasonably amend a prior answer if the individual or party obtains information upon the basis of which the individual or party knows that the answer was incorrect when made or is no longer true. Parties shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Parties filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any party or person shall answer on such terms and conditions as are just and may for good cause make any protective

order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3010.312 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any party may serve on any other party to the proceeding a request to produce and permit the party making the request, or someone acting on behalf of the requesting party or the requesting party's agent to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding or reasonably calculated to lead to the discovery of admissible evidence and that are in the custody or control of the party to whom the request is addressed. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The party requesting the production of documents or things shall file its request with the Commission and serve the request on the responding party.

(b) *Answers.* The party responding to the request shall file an answer with the Commission and serve the answer on the requesting party within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The responding party may produce copies of documents or of electronically stored information in lieu of permitting inspection. Production must be completed no later than the time for inspection specified in the request unless good cause is shown.

(c) *Objections.* In the interest of expedition, the grounds for objection shall be clearly and fully stated. If an objection is made to part of an item or category, the part shall be specified. Any objection must state whether any responsive materials are being withheld on the basis of that objection. A party claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A party claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections shall be filed with the Commission and served on the requesting party within ten days of the request for production. The responding party may state an objection to a request to produce electronically stored information. If it objects to the form of the documents or things requested (or if no form was specified in the request), the responding party must state the form or forms it intends to use to produce the requested information.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* Upon motion of any party to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection is overruled. Such compelled documents or things shall be made available to the party making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(f) *Orders and rulings.* The Commission or the presiding officer may direct any party or person to respond to a request for inspection on such terms and conditions as are just and may for good cause impose any protective conditions, including limitations or preconditions for inspections, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3010.313 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. Each requested admission shall be set forth separately and shall be deemed admitted unless within 14 days after the request is filed (or such other period as may be fixed by the Commission or presiding officer) the party to whom the request is directed files a written answer denying the requested admission pursuant to paragraph (c) of this section or objecting pursuant to paragraph (d) of this section. The party requesting an admission shall file its request with the Commission and serve the request on the responding party.

(b) *Answers.* Answers that fail to admit a matter as requested shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When a party qualifies an answer or denies only a part of the admission requested, the party shall specify so much of the requested admission as is true and qualify or deny the remainder. A failure to admit or deny for lack of information or knowledge shall not be made unless the responding party states that it has made a reasonable inquiry and that information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who answers a request for admission shall file its answer with the Commission and serve the answer on the requesting party.

(c) *Objections.* If an objection is made, the grounds for such objection shall be clearly and fully stated. If an objection is made to part of an item, the part to which an objection is made shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections shall be filed with the Commission and served on the requesting party, within ten days of the request for admissions.

(d) *Motions to compel responses to requests for admissions.* The party who has requested an admission may move to determine the sufficiency of the answers or objections. Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions,

and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to file a response. Responses will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is overruled. Such compelled answers shall be filed with the Commission and served on the requesting party within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be filed.

§ 3010.320 Settlement conferences.

Any party to a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the parties to consider such offers or proposals. The Commission or the presiding officer shall afford the parties appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any party claiming such privilege.

§ 3010.321 Hearings.

(a) *How convened.* (1) Hearings shall be convened by the issuance of a notice, order, or presiding officer's ruling that is published in the **Federal Register**. Only the first session of a public hearing need be noticed and published in the **Federal Register**. All subsequent sessions within a docket are to be considered part of the same hearing. If there is a prehearing conference, the prehearing conference is to be considered the first hearing session in that docket.

(2) At the adjournment of each hearing session, the presiding officer responsible for the conduct of that hearing session shall announce if and when the hearing will reconvene. If an announcement is not made at the adjournment of the hearing session, the Commission or presiding officer shall announce the time, date, and location of any subsequent hearing, or prehearing conference, in writing by notice, order, or presiding officer ruling.

(b) *Who presides.* The presiding officer, if designated, shall preside over a public hearing. If a presiding officer has not been designated or is otherwise unavailable for a hearing, then the ranking Commissioner in attendance shall be considered the presiding officer for that hearing. The presiding officer shall open and close each session of the hearing, and shall be responsible for controlling the conduct of the hearing.

(c) *Entering of appearances.* The presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

(d) *Witnesses.* All witnesses are expected to be available for public hearings. Unless otherwise ordered by the presiding officer, a witness need only attend a hearing on those days scheduled for entering that witness's testimony. Subject to the discretion and prior approval of the presiding officer, a witness may be excused from appearing at a hearing and may have the witness's written testimony and cross-examination entered into evidence by counsel.

(e) *Order of presentations.* (1) The proponent of a matter before the Commission shall present the proponent's direct case first. In matters initiated by the Postal Service, the Postal Service shall be considered the proponent. In complaint proceedings under section 3662 of the Act, the complainant shall be considered the proponent. The proponent also shall be provided an opportunity to respond to any rebuttal to the proponent's direct case. In all other instances, the Commission or the presiding officer shall determine the order of presentation.

(2) The order of presentations by parties other than the proponent shall be determined by the Commission or the presiding officer.

(3) The Commission or presiding officer shall announce the order of presentation of parties and individual witnesses prior to hearing sessions and shall issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing. Parties may present their preferences for order of appearance to the Commission or the presiding officer orally in a hearing, by filing a notice, or by informally contacting the Commission's General Counsel, prior to the scheduled hearing date.

(f) *Swearing in of witnesses.* (1) Witnesses attending a hearing whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them. The witness shall be sworn by means of the following (or an equivalent): ''Please raise your right hand. Do you solemnly swear (or affirm), that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth? Please state your full name.''

(2) The oath shall be given upon the first appearance of the witness providing testimony. Upon subsequent appearances, the witness is to be reminded by the presiding officer that the witness remains under oath for the duration of the proceeding.

(3) Witnesses not attending a hearing whose testimony is entered by counsel during a hearing shall attach a signed declaration that the testimony being submitted is that of the witness. A declaration shall be included with each piece of written testimony, and each set of written cross-examination. The declaration shall state the following (or an equivalent): ''Declaration of [witness name]. I, [witness name], hereby declare under penalty of perjury that: The [testimony, designated responses to written cross-examination] filed under my name were prepared by me or under my direction; and were I to [provide oral testimony, respond orally to the questions appearing in the interrogatories], my answers would be the same.''

(4) Hearings that are conducted by the written submission of testimony only shall also attach written declarations to testimony and cross-examination as described above.

(g) *Presentation of the evidence*—(1) *Presentations by parties.* Each party shall have the right to present evidence, cross-examine witnesses (limited to testimony adverse to the party conducting the cross-examination), and to present objections, motions, and arguments. The case-in-chief of parties other than the proponent shall be in writing and shall include the party's direct case and rebuttal, if any, to the initial proponent's case-in-chief. A party's presentation may be accompanied by a trial brief or legal memoranda. Legal memoranda on matters at issue are generally welcome at any stage of the proceeding. Parties will be given an opportunity to rebut presentations of other parties, including an opportunity for the initial proponent to present surrebuttal evidence. New

affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written testimony.* (i) Written testimony shall be offered in evidence by motion. The motion shall be made orally during a hearing, or in writing when the hearing is conducted by the written submission of testimony only. When a party moves to enter testimony into the record, three hard copies of the document shall simultaneously be submitted to the Commission for the record. The copies are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent.

(ii) Witnesses shall be provided an opportunity to verify that the written testimony they are sponsoring is their testimony and that it would be the same if given orally. The witness, or counsel, shall state the original filing date of the testimony and identify all subsequent filings that amended the original testimony. If there are any final corrections to the testimony, the corrections may be noted on the hard copies submitted to the Commission. However, the witness shall be required to file errata to the testimony within seven days of the hearing, making corrections only to the extent as identified during the hearing. Any other changes shall be requested separately by motion to amend the record.

(iii) Parties shall be provided an opportunity to object to all or part of a witness's written testimony prior to entering that testimony into the record. Objections that have not previously been made in writing at least 14 days prior to the hearing date shall be granted only under extraordinary circumstances.

(iv) After resolution of all objections, the presiding officer shall order the testimony entered into the record as evidence. Unless otherwise ordered by the presiding officer, the written testimony shall not be copied into the hearing transcript.

(3) *Library references.* (i) Library references sponsored by a witness and associated with the witness's written testimony or written cross-examination may be offered in evidence by motion. The motion shall be made orally during a public hearing, or in writing for a hearing that is conducted by the written submission of testimony only.

(ii) Witnesses shall be provided an opportunity to verify that the library reference is their library reference and to affirm that they are in fact sponsoring the library reference. If a witness inadvertently fails to verify and affirm that the witness is sponsoring a library reference that is cited in written testimony or in response to written cross-examination, it will be presumed that the library reference is to be included in the record to the extent specified in the notice of the filing of the library reference.

(iii) Parties shall be provided an opportunity to object to all or any part of the library reference being entered into the record. Objections that have not been made in writing at least 14 days prior to the hearing date shall be granted only under extraordinary circumstances.

(iv) After resolution of all objections, the presiding officer shall order the library reference be entered into the record as evidence. Unless ordered by the presiding officer, library references shall not be copied into the hearing transcript.

(4) *Written cross-examination.* (i) Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Written cross-examination may be offered in evidence by motion. The motion shall be made orally during a public hearing, or in writing for a hearing that is conducted by the written submission of testimony only. Written cross-examination proposed by parties other than the party associated with the witness shall be considered first, followed by that of the party of the witness.

(ii) Designations of written cross-examination should be filed with the Commission and served on the answering party no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the party who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''PR–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).'' When a party designates written cross-examination, three hard copies of the documents to be included shall simultaneously be submitted to the Secretary. The documents are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. The Secretary shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel.

(iii) A witness shall be provided an opportunity to verify that the written cross-examination is that of the witness and to assert that if the written cross-examination were being provided orally at the hearing it would be that of the witness. If there are any final corrections to the written cross-examination, the corrections may be noted on the hard copies before submission to the Commission.

(iv) Parties shall be provided an opportunity to object to all or any part of the written cross-examination prior to entering the testimony into the record.

(v) After resolution of all objections, the presiding officer shall order the written cross-examination entered into the record as evidence. The presiding office shall direct that the written cross-examination be copied into the hearing transcript.

(5) *Oral cross-examination.* (i) Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions, or other opinion evidence.

(ii) Notices of intent to conduct oral cross-examination should be filed three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. If no notices are filed, and the Commission or presiding officer has no other reason for the witness to appear, the Commission or the presiding officer, in their discretion, may excuse the witness from appearing at the hearing and direct that the witness's testimony be entered by counsel.

(iii) A party intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be filed at least two full business days before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the party. When presented, examination exhibits are not to be considered record evidence. They are to be transcribed into the record for reference only. If adopted by the witness, the examination exhibit may be offered in evidence by motion.

(iv) At the conclusion of oral cross-examination, the witness shall be given an opportunity to consult with counsel.

Counsel shall then be provided an opportunity to examine the witness for the purpose of clarifying statements previously made during oral cross-examination.

(h) *Institutional testimony.* (1) This paragraph (h) is applicable to testimony offered in evidence that is not sponsored by an individual witness. This typically occurs when discovery questions are answered by the institution, and not by an individual witness.

(2) When institutional responses are offered in evidence by any party, the responding party shall make available at the hearing an officer of the institution that has the authority to attest to the authenticity and truthfulness of the responses, and that has the knowledge to be subject to oral cross-examination in regard to the responses. Section 3010.321 applies as if the officer of the institution were an individual witness.

(i) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately the number of witnesses to be heard upon any issue, the examination by any party to specific issues, and the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(j) *Motions during hearing.* After a hearing has commenced, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall specify the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any party shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(k) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of a presiding officer's intermediate decision. This section shall not preclude a presiding officer, within the presiding officer's discretion, from referring any motion made in hearing to the Commission for ultimate determination.

(l) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing. Any request to correct a transcript shall be by motion filed no later than seven days after the transcript, or notice of the availability of a confidential transcript, is posted to the Commission's website. Corrections or changes to actual testimony shall not be allowed.

§ 3010.322 Evidence—general.

(a) *Form and admissibility.* In all hearings, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) *Documentary material*—(1) *General.* Documents and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the party offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the party offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(2) *Status of library references.* Designation of material as a library reference and acceptance in the Commission's docket section do not confer evidentiary status. The evidentiary status of the material is governed by § 3010.321(g)(3).

(c) *Commission's files.* Except as otherwise provided in paragraph (e) of this section, any matter contained in a report or other document on file with the Commission may be offered in evidence by specifying the report, document, or other file containing the matter so offered and the report or other document need not be produced or marked for identification.

(d) *Public document items.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof.

(e) *Designation of evidence from other Commission dockets.* (1) Parties may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number.

(2) In proceedings to consider the appeal of a Postal Service determination to close or consolidate a post office

conducted pursuant to part 3021 of this chapter, these requests must be made at least six days before the date for filing the party's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within three days. Oppositions to requests for counter-designations are due within two days.

(3) In all other proceedings subject to this section, these requests must, in the absence of extraordinary circumstances, be made at least 28 days before the date for filing the party's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days.

(4) In all proceedings subject to this section, the moving party must submit two copies of the identified material to the Secretary at the time requests for designations and counter-designations are made.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3010.124(a) and (b).

(g) *Copies to parties.* Except as otherwise provided in these rules, copies of exhibits shall be furnished to the presiding officer and to the parties or counsel during a hearing, unless the presiding officer otherwise directs.

(h) *Reception and ruling.* The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) *Offers of proof.* Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the knowledge of the Commission as an expert body. Any party shall, on timely request, be afforded an opportunity to show the contrary.

§ 3010.323 Evidence—introduction and reliance upon studies and analyses.

(a) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized, the procedures undertaken, and references from the academic literature supporting the procedures undertaken. Machine-readable data files, program files, workbooks, and all other necessary materials to enable independent replication of the results or program output if requested by the Commission or parties shall be provided in the form of a compact disk or other media or method approved in advance by the Secretary. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by paragraph (b) of this section shall be furnished, upon request. In addition, for each of the following types of statistical studies, the following information should be provided:

(1) *Market research.* The following information shall be provided:

(i) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, questionnaires or data collection instruments, survey variables, and the possible values;

(ii) An explanation of methodology for the production and analysis of the major survey estimates and associated sampling errors;

(iii) A presentation of response, coverage and editing rates, and any other potential sources of error associated with the survey's quality assurance procedures;

(iv) A discussion of data comparability over time and with other data sources;

(v) A complete description and assessment of the effects of all editing and imputation employed;

(vi) Identification of all applicable statistical models considered and the reasons the model based procedures and/or models were selected over other models or procedures, when model-based procedures are employed; and

(vii) An explanation of all statistical tests performed and an appropriate set of summary statistics summarizing the results of each test.

(2) *Other sample surveys.* The following information shall be provided:

(i) A clear description of the survey design, including the definition of the universe under study, the sampling frame and units, and the validity and confidence limits that can be placed on major estimates; and

(ii) An explanation of the method of selecting the sample and the characteristics measured or counted.

(3) *Experimental analyses.* The following information shall be provided:

(i) A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized; and

(ii) A complete description of the methods of making observations and the adjustments, if any, to observed data.

(4) *Econometric studies.* The following information shall be provided:

(i) A presentation of the economic theory and assumptions underlying the study;

(ii) A complete description of the econometric model(s) and the reasons for each major assumption and specification;

(iii) The definition of the variables selected and the justification for their selection;

(iv) For any alternative model whose computed econometric results influenced the choice of the preferred model, a statement of the reasons for rejecting that alternative, an identification of any differences between that alternative and the preferred model with respect to variable definitions, equation forms, data, or estimation methods, and, upon request, the computed econometric results for that alternative;

(v) A reference to a detailed description in a text, manual, or technical journal for every econometric technique used in the estimation process and the reasons for selecting the technique, or, in the alternative, a description and analysis of the technique that is sufficient for a technical evaluation;

(vi) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data. Complete descriptions of any alterations, adjustments, or transformations made to the data as received from the original sources, and the reasons for making the alterations, adjustments, or transformations;

(vii) A complete report of the econometric results including, where applicable coefficient estimates, standard errors and t-values, goodness-of-fit statistics, other appropriate test statistics, the variance/covariance matrix of the estimates, and computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals; and

(viii) Descriptions of all statistical tests of hypotheses and the results of such tests.

(5) *All other studies involving statistical methodology.* The following information shall be provided:

(i) The formula used for statistical estimates;

(ii) The standard errors of each component estimated;

(iii) Test statistics and the description of statistical tests and all related computations, and final results; and

(iv) Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

(b) *Computer analyses.* (1) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a listing of the input and output data and source codes (or a showing pursuant to paragraph (b)(3) of this section as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a party, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing. The following information shall be provided:

(i) For all input data, designations of all sources of such data, and explanations of any modifications to such data made for use in the program;

(ii) Definitions of all input and output variables or sets of variables;

(iii) A description of input and output data file organization;

(iv) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(v) All pertinent operating system and programming language manuals;

(vi) If the requested program is user interactive, a representative sample run, together with any explanation necessary to illustrate the response sequence;

(vii) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output; and

(viii) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of this paragraph (b) and the separate requirements of paragraph (a) of this section, to the extent that portions of the simulation model utilize or rely upon such studies. Information that compares the simulation model output results to the actual phenomena being modelled, using data other than those from which the model was developed, shall be separately identified and submitted as evidence supporting the test and validation of the simulation model. Separate statements concerning the model limitations, including limiting model design assumptions and range of data input utilized in model design, shall be provided. Where test and validation of the entire simulation model are not possible, test and validation information shall be provided for disaggregate portions of the model. If disaggregate testing and validation are not possible, separate statements to that effect and statements regarding operational experts' review of model validity shall be provided.

(2) Upon timely and otherwise proper request of a party, or *sua sponte,* the Commission or the presiding officer may rule that matters other than those listed in paragraphs (b)(1)(i) through (viii) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.

(3) When the requestor is other than the Commission or the presiding officer, the cost of producing the material required in paragraph (b)(1)(iv), (vi), and (vii) of this section, shall be borne by the requesting party unless otherwise ordered, for good cause shown by the requestor. When the Commission or the presiding officer is the requestor, it may assume or equitably allocate such costs for good cause shown by the requester.

(4) If the recipient of a request for materials pursuant to this paragraph (b) asserts that compliance with the request would conflict with patent, copyright, trade secret or contract rights applicable to the requested material, the recipient shall immediately notify the requestor and the presiding officer. If valid, the presiding officer shall devise means of accommodating such rights. Such means may include protective orders, including access under protective conditions to the computer facilities of the recipient of a request, making material available for inspection, compensation, or other procedures, according to the nature of the right affected by compliance with this paragraph (b) of this section. If the presiding officer determines that compensation is necessary to accommodate the affected right, the cost of compensation shall be borne in the same manner that paragraph (b)(3) of this section prescribes for bearing the costs referenced there. If such right cannot be accommodated by reasonable compensation, or by protective orders or other procedures, and, as a result, materials required by this paragraph (b) cannot be provided, the presiding officer shall determine, in the presiding officer's discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(c) *Other studies and analyses.* In the case of all studies and analyses offered in evidence in hearing proceedings or relied upon as support for other evidence, other than the kinds described in paragraphs (a) and (b) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based, together with an indication of the alternative courses of action considered and the steps taken to ensure the validity, accuracy, and reliability of the evidence. Tabulations of input data, workbooks, and all other materials necessary to replicate results shall be made available upon request at the offices of the Commission.

(d) *Expedition.* The party who offers studies or analyses in evidence shall expedite responses to requests made pursuant to this section for data or other information. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3010.127 no later than 3 days after a request is made under § 3010.322(e)(2) or no later than 14 days after a request is made under § 3010.322(e)(3).

§ 3010.324 In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to *in camera* orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose *in camera* data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* (1) Presiding officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed *in camera.* The order shall specify the date on which *in camera* treatment expires and shall include:

(i) A description of the documents and testimony;

(ii) A full statement of the reasons for granting *in camera* treatment; and

(iii) A full statement of the reasons for the date on which *in camera* treatment expires.

(2) Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation ''*In Camera* Record under § 3010.323,'' and the date on which *in camera* treatment expires.

(c) *Release of in camera information. In camera* documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

(d) *Briefing of in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of *in camera* documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of *in camera* data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked ''confidential,'' which shall be placed *in camera* and become a part of the *in camera* record.

§ 3010.325 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition when authorized by the Commission or the presiding officer on application of any party before the hearing is closed. An authorization to take the deposition of a witness will be issued only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue delay or an undue burden to other parties.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed with the Commission or the presiding officer and shall state:

(1) The name, identification, and post office address of the witness;

(2) The subject matter of the testimony.

(3) The time and place of taking the deposition;

(4) The name, identification, and post office address of the officer before whom the deposition is to be taken; and

(5) The reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the parties within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any party or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3010.124(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt, the Secretary shall hold the original for use in the hearing upon request by any party and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Parties shall have the right for cross-examination and objection. In lieu of participation in the oral examination, parties may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the deposition is offered in evidence by a party, any other party may require the party to introduce all of it which is relevant to the part introduced, and any party may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the party or parties on whose application the deposition was taken.

§ 3010.330 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of the decision. In addition, subject to such consideration,

due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission may direct each party to file its brief simultaneously with the filing of briefs by other parties. In cases where, because of the nature of the issues and the record or the limited number of parties involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the parties may be directed to file more than one brief and at different times rather than a single brief filed simultaneously with briefs filed by other parties. The Commission or presiding officer may also order the filing of briefs during the course of the proceeding.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing party;

(3) A clear, concise, and definitive statement of the position of the filing party as to the matter before the Commission and the decision to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed with the Commission and served on all parties as required pursuant to subpart B of this part.

§ 3010.331 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

§ 3010.332 Oral argument before the presiding officer.

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in the presiding officer's opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. The presiding officer shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each party. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3010.333 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any party or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any party in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the parties of the time and place set for argument, the amount of time allowed each party, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables, and other written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed with the Secretary and served on all parties at least seven days in advance of the argument. Enlargements of such charts, graphs, maps, and tables may be used at the argument provided copies are filed and served as required by this paragraph.

§ 3010.334 Commission decisions.

(a) At the conclusion of a proceeding on the record with the opportunity for a hearing, the Commission shall issue a final decision which either:

(1) Adopts an intermediate decision prepared by a presiding officer; or

(2) Rules upon the matters that are before the Commission, or provides explanation for why such rulings are not being provided.

(b) Commission decisions shall be based on the evidence entered into the record, and consider the arguments filed on brief. Argument provided in comments may further inform the Commission's decision, but have no evidentiary standing and are not required to be addressed in the final decision.

(c) An intermediate decision may be adopted by the Commission in whole or in part. When an intermediate decision is adopted in part, the Commission shall explain its decisions regarding both what is and is not adopted.

(d) When exceptions, or objections to exceptions, to an intermediate decision are filed pursuant to § 3010.336 by any party to the proceeding, the Commission shall consider and rule upon such exceptions, or objections to exceptions in its final decision.

(e) Commission decisions shall be filed in the docket and served on all parties. Commission decisions shall be part of the record of the proceeding.

§ 3010.335 Intermediate decisions.

(a) An intermediate decision shall be issued by the presiding officer which rules upon the matters that are before the Commission, or provides explanation for why such rulings are not being provided, in a proceeding on the record with the opportunity for a hearing when:

(1) The Commission is not sitting *en banc;* or

(2) The presiding office has been directed to issue an intermediate decision by Commission notice or order.

(b) Intermediate decisions shall be based on the evidence entered into the record, and shall consider the arguments filed on brief. Arguments provided in comments may further

inform the presiding officer's decision, but are not required to be addressed in the intermediate decision.

(c) Intermediate decisions shall be filed in the docket and served on all parties. Intermediate decisions shall be part of the record of the proceeding.

(d) Intermediate decisions are subject to review by the Commission and subject to challenge by parties to the proceeding through the filing of exceptions pursuant to § 3010.336. After review and consideration of the exceptions filed, intermediate decisions may be adopted by the Commission, in whole or in part, as part of the final decision in the proceeding.

(e)(1) The Commission may, at any time, direct the omission of an intermediate decision and the certification of the record for the Commission's consideration sitting *en banc.* Parties to a proceeding may, by motion, request the omission of an intermediate decision and the certification of the record for the Commission's consideration sitting *en banc.* Motions shall specify:

(i) The concurrence of other parties; and

(ii) Whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived.

(2) Failure of any party to object to such request shall constitute a waiver of any objections. Motions shall be filed no later than the deadline for the filing of briefs. In either instance, the decision to omit an intermediate decision shall be based upon the consideration of the novelty of the matters before the Commission, and the timely and efficient operation of the docket.

§ 3010.336 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any party in a proceeding may file exceptions to any intermediate decision by first filing a notice of intent to file a brief on exceptions with the Commission within seven days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. The brief on exceptions shall be filed with the Commission within 30 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any party to a proceeding may file a response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No further response will be entertained unless the Commission, upon motion for good cause shown or on its own initiative, so orders.

(b) *Filing and contents.* Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with § 3010.330. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions should not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions and briefs opposing exceptions need not contain a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another party to which reference is made.

(c) *Failure to except results in waiver.* Any party who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

PART 3011—NON-PUBLIC MATERIALS PROVIDED TO THE COMMISSION

■ 44. The authority for newly redesignated part 3011 continues to read as follows:

Authority: 39 U.S.C. 503, 504.

■ 45. Amend newly redesignated § 3011.101 by revising paragraph (a) to read as follows:

§ 3011.101 Definitions.

(a) *Non-public materials* means any documents or things that are provided to the Commission and identified as containing non-public information. The Postal Service may claim that information that would be exempt from disclosure pursuant to 39 U.S.C. 410(c), 504(g), 3652(f), or 3654(f) is non-public information. Any person other than the Postal Service with a proprietary interest in the materials may claim that information that would be protectable under Federal Rule of Civil Procedure 26(c) is non-public information. Any person may claim that information that is exempt from public disclosure under 5 U.S.C. 552(b) is non-public information. Non-public materials cease to be non-public if the status has expired or has been terminated by the Commission pursuant to this part. Except as provided by § 3011.205, non-public materials cease to be non-public if the submitter publicly discloses the materials with the consent of each affected person with a propriety interest in the materials (if applicable). The cessation of non-public status applies to the particular document or thing and the particular information contained therein (in whole or in part, as applicable).

* * * * *

■ 46. Amend newly redesignated § 3011.102 by revising paragraph (a) to read as follows:

§ 3011.102 Treatment of non-public materials.

(a) Except as described in part 3011 or part 3006 of this chapter, the Commission will neither disclose nor grant access to any non-public materials (and the non-public information contained therein).

* * * * *

■ 47. Amend newly redesignated § 3011.103 by revising paragraphs (a) and (c) to read as follows:

§ 3011.103 Commission action to determine non-public treatment.

(a) Information requests as described in § 3010.170 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

* * * * *

(c) Upon its own motion, the Commission may issue notice of its preliminary determination concerning the appropriate degree of protection, if any, to be accorded to materials claimed by any person to be non-public. A response is due within seven calendar days of issuance of the preliminary determination, unless the Commission otherwise provides. No reply to a response shall be filed, unless the Commission otherwise provides. Pending the Commission's resolution of the preliminary determination, information designated as non-public will be accorded non-public treatment. The Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in this paragraph has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

■ 47. Amend newly redesignated § 3011.200 by revising paragraph (a) to read as follows:

§ 3011.200 General requirements for submitting non-public materials and seeking non-public treatment.

(a) Whenever providing non-public materials to the Commission, the submitter shall concomitantly provide the following: An application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be

submitted to the Commission in accordance with § 3011.201, a redacted (public) version of the non-public materials in accordance with § 3011.202, and an unredacted (sealed) version of the non-public materials in accordance with § 3011.203.

* * * * *

■ 48. Amend newly redesignated § 3011.203 by revising paragraph (b) to read as follows:

§ 3011.203 Unredacted version of the non-public materials.

* * * * *

(b) The Filing Online method that results in posting a document that is available to the public, which is accessible through the Commission's website (*http://www.prc.gov*) described under part 3010, subpart B of this chapter may not be used to submit the unredacted version of non-public materials.

* * * * *

■ 49. Amend newly redesignated § 3011.205 by revising paragraphs (a) through (c) introductory text and (c)(3) to read as follows:

§ 3011.205 Non-public materials inadvertently submitted publicly.

(a) Any filer or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a public filing made in accordance with subpart B to part 3010 of this chapter shall telephone Dockets personnel immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, Dockets personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the filer or person with a proprietary interest an opportunity to file an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any filer makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this filer as necessary to ensure secure filing of non-public materials.

(b) Any submitter or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a publicly available submission made to the Commission in circumstances other than through a public filing made in accordance with subpart B to part 3010 of this chapter shall telephone the Commission personnel to whom the submission was directed immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, the Commission personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the submitter or person with a proprietary interest an opportunity to submit an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any submitter makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this submitter as necessary to ensure secure submission of non-public materials.

(c) An application for non-public treatment made under paragraph (a) or (b) of this section shall also clearly indicate if any special relief is sought. Examples of special relief include a request that any person not granted access to the materials under § 3011.300 or § 3011.301 perform any or all of the following actions:

* * * * *

(3) Take reasonable steps to retrieve any materials, and the information contained therein, that are claimed to be non-public and were disclosed to any person not granted access to the materials under § 3011.300 or § 3011.301 prior to the submission of application for non-public treatment.

■ 50. Amend newly redesignated § 3011.300 by revising paragraphs (a) and (c) to read as follows:

§ 3011.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to § 3011.301(e):

* * * * *

(c) Any person not described in paragraph (a) or (b) of this section may request access to non-public materials as described in § 3011.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.

■ 51. Amend newly redesignated § 3011.301 by revising paragraphs (b)(4), (c), and (e) to read as follows:

§ 3011.301 Motion for access to non-public materials.

* * * * *

(b) * * *

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to § 3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

* * * * *

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of filing the motion, unless the Commission otherwise provides.

* * * * *

(e) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to § 3011.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any person other than the submitter with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

■ 52. Revise newly redesignated § 3011.302 to read as follows:

§ 3011.302 Non-dissemination, use, and care of non-public materials.

(a) No person who has been granted access to non-public materials in accordance with § 3011.300 or § 3011.301 may disseminate the materials or the information contained therein, in whole or in part, to any person not allowed access pursuant to § 3011.300 or § 3011.301.

(b) Persons with access to non-public materials under § 3011.300 or § 3011.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under § 3011.300 or § 3011.301 shall protect the non-public materials from any person not granted access under § 3011.300 or § 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

■ 53. Amend newly redesignated § 3011.303 by revising paragraph (a) introductory text to read as follows:

§ 3011.303 Sanctions for violating protective conditions.

(a) If a person who has been granted access to non-public materials under § 3011.301 violates the terms of the order granting access, the Commission may impose sanctions on the person who violated the order, the persons or entities on whose behalf the person was acting, or both. The sanctions may include any or all of the following:

* * * * *

■ 54. Amend newly redesignated § 3011.304 by revising paragraphs (a)(1) and (b) to read as follows:

§ 3011.304 Termination and amendment of access to non-public materials.

(a) * * *

(1) Except as provided in paragraph (b) of this section, access to non-public materials granted under § 3011.301 terminates either when the Commission issues the final order or report concluding the proceeding(s) in which the participant who filed the motion seeking access represented that the non-public materials would be used, or when the person granted access withdraws or is otherwise no longer involved in the proceeding(s), whichever occurs first. For purposes of this paragraph, an order or report is not considered final until after the possibility of judicial review expires (including the completion of any Commission response to judicial review, if applicable).

* * * * *

(b) *Amendment of access.* Any person may file a motion seeking to amend any protective conditions related to access of non-public materials, including extending the timeframe for which access is granted or expanding the persons to whom access is to be granted, in accordance with § 3011.301.

■ 55. Amend newly redesignated § 3011.305 by revising paragraph (a) to read as follows:

§ 3011.305 Producing non-public materials in non-Commission proceedings.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials that a person obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within two days of receipt of the subpoena or order, notify each person identified pursuant to § 3011.201(b)(2) of the pendency of the subpoena or order to allow time to object to that production or to seek a protective order or other relief.

* * * * *

■ 56. Revise the newly redesignated appendix A to subpart C of part 3011 to read as follows:

Appendix A to Subpart C of Part 3011—Template Forms Protective Conditions Statement

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter ''these materials'') in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) (hereinafter ''the movant'') requests access to these materials related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter ''this matter'').

The movant has provided to each person seeking access to these materials:

○ this Protective Conditions Statement;

○ the Certification to Comply with Protective Conditions;

○ the Certification of Compliance with Protective Conditions and Termination of Access; and

○ the Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing/s/before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

a. Specific Commission order,

b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or

c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

a. must use these materials only related to this matter; and

b. must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

b. Excerpts from, parts of, or the entirety of these materials;

c. Written materials that quote or contain these materials; and

d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as ''Confidential'' and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative)

/s/ _____

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(email address of representative)

(choose the appropriate response)

Attorney/Non-Attorney Representative for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(5).

Certification To Comply With Protective Conditions

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter ''these materials'') filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter ''this matter'').

I certify that:

○ I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;

○ I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and

○ I will comply with all protective conditions established by the Commission.

(signature of individual receiving access)

/s/ _____

(print name of individual receiving access)

_____

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(6).

Certification of Compliance With Protective Conditions and Termination of Access

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter ''these materials'') filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

The Commission granted the request by _____ (name of participant filing notice) to grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter ''this matter'').

I certify that:

○ I accessed, maintained, and used these materials in accordance with the protective conditions established by the Commission;

○ Effective _____ (date), my access to these materials was terminated; and

○ Effective _____ (date), I no longer have any of these materials or any duplicates.

(signature of individual granted access)

/s/ _____

(print name of individual granted access)

(title of individual granted access)

(employer of individual granted access)

(name of participant filing notice)

(date)

You may delete the instructional text to complete this form. This form should be filed as an attachment to the notice of termination of access to non-public materials under 39 CFR 3011.304(a)(2).

■ 57. Amend newly redesignated § 3011.400 by revising paragraphs (a) through (c) and (f) to read as follows:

§ 3011.400 Motion for disclosure of non-public materials.

(a) *Application of this section.* This section applies to non-public materials during the initial duration of non-public status, up to ten years, and any non-public materials for which the Commission enters an order extending the duration of that status under § 3011.401(a).

(b) *Motion for disclosure of non-public materials.* Any person may file a motion with the Commission requesting that non-public materials be publicly disclosed. Any part of the motion revealing non-public information shall be filed in accordance with subpart B of this part. The motion shall justify why the non-public materials should be made public and specifically address any pertinent rationale(s) provided in the application for non-public treatment. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of filing the motion, unless the Commission otherwise provides.

* * * * *

(f) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to § 3011.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in paragraph (c) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

■ 58. Amend newly redesignated § 3011.401 by revising paragraphs (c) and (f) to read as follows:

§ 3011.401 Materials for which non-public treatment has expired.

* * * * *

(c) *Response.* A response to the request is due within seven calendar days of the filing of the request, unless the Commission otherwise provides. Any response opposing the request shall seek an extension of non-public status by including an application for non-

public treatment compliant with § 3007.201 of this chapter. This extension application shall also include specific facts in support of any assertion that commercial injury is likely to occur if the information contained in the materials is publicly disclosed despite the passage of ten years or the timeframe established by Commission order.

* * * * *

(f) *Ruling.* The Commission may grant the request at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the request and enter an order extending the duration of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

■ 59. Revise the newly redesignated appendix A to subpart D of part 3011 to read as follows:

Appendix A to Subpart D of Part 3011—Template Forms

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268–0001

(Caption) _____
Docket No. ____ - ____

_____

REQUEST FOR MATERIALS FOR WHICH NON-PUBLIC TREATMENT HAS EXPIRED

_____, 20 _____(date)

On _____ (date non-public materials were initially submitted), non-public treatment was requested for the materials identified as _____ (non-confidential description of non-public materials) (hereinafter ''these materials''). Because the non-public treatment of these materials has expired, I request that these materials be disclosed to the public.

Respectfully submitted,

(signature of representative)
/s/ _____

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(email address of representative)

(choose the appropriate response)
Attorney/Non-Attorney Representative for

(name of the requestor)

You may delete the instructional text to complete this form and file a request under 39 CFR 3011.401(b).

PART 3012—EX PARTE COMMUNICATIONS

■ 60. The authority for newly redesignated part 3012 continues to read as follows:

Authority: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

■ 61. Amend newly redesignated § 3012.1 by revising paragraph (c) to read as follows:

§ 3012.1 Applicability.

* * * * *

(c) The rules in this section are not applicable to international mail (IM) proceedings undertaken pursuant to part 3025 of this chapter.

* * * * *

■ 62. Amend newly redesignated § 3012.2 by revising paragraph (b)(3) to read as follows:

§ 3012.2 Definition of ex parte communications.

* * * * *

(b) * * *

(3) Communications during the course of off-the-record technical conferences associated with a matter before the Commission, or the pre-filing conference for nature of service cases required by § 3020.111 of this chapter, where advance public notice of the event is provided indicating the matter to be discussed, and the event is open to all persons participating in the matter before the Commission;

* * * * *

■ 63. Amend newly redesignated § 3012.4 by revising paragraph (d)(2) to read as follows:

§ 3012.4 Definitions of persons subject to ex parte communication rules.

* * * * *

(d) * * *

(2) Commission personnel not participating in the decisional process owing to the prohibitions of § 3010.144 of this chapter regarding no participation by investigative or prosecuting officers;

* * * * *

■ 64. Amend newly redesignated § 3012.7 by revising paragraphs (b) and (c) to read as follows:

§ 3012.7 Penalty for violation of ex parte communication rules.

* * * * *

(b) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of § 3012.5(a), the Commission or presiding officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why the participant's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of § 3012.5(a) sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

PART 3013—PROCEDURES FOR COMPELLING PRODUCTION OF INFORMATION BY THE POSTAL SERVICE

■ 65. The authority for newly redesignated part 3013 continues to read as follows:

Authority: 39 U.S.C. 503; 504; 3651(c); 3652(d).

■ 66. Amend newly redesignated § 3013.1 by revising paragraph (b) to read as follows:

§ 3013.1 Scope and applicability of other parts of this title.

* * * * *

(b) Subparts A, B, and D to Part 3010 of this chapter apply unless otherwise stated in this part or otherwise ordered by the Commission.

■ 67. Amend newly redesignated § 3013.11 by revising paragraphs (d)(4) and (e) to read as follows:

§ 3013.11 General rule—subpoenas.

* * * * *

(d) * * *

(4) That a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way as provided in part 3011 of this chapter; and

* * * * *

(e) Subpoenas shall be served in the manner provided by § 3013.14.

■ 68. Amend newly redesignated § 3013.12 by revising paragraphs (a) and (d) to read as follows:

§ 3013.12 Subpoenas issued without receipt of a third-party request.

(a) A subpoena duly authorized by a majority of the Commissioners then holding office may be issued by the Chairman, a designated Commissioner, or an administrative law judge under § 3013.11 without a request having been made by a third party under § 3013.13.

* * * * *

(d) Subpoenas issued under this section shall be issued subject to the right of the Postal Service and other interested persons to file a motion pursuant to § 3010.160(a) of this chapter to quash the subpoena, to limit the scope of the subpoena, or to condition the subpoena as provided in § 3013.11(d). Such motion shall include any objections to the subpoena that are

personal to the covered person responsible for providing the information being sought. Motions alleging undue burden or cost must state with particularity the basis for such claims. Answers to the motion may be filed by any interested person pursuant to § 3010.160(b) of this chapter. Pending the resolution of any such motion, the covered person shall secure and maintain the requested information.

■ 69. Amend newly redesignated § 3013.13 by revising paragraphs (a) introductory text, (a)(2) through (4), (b) introductory text, and (b)(1) and (2) to read as follows:

§ 3013.13 Subpoenas issued in response to a third-party request.

(a) *Procedure for requesting and issuing subpoenas when hearings have been ordered.* A participant in any proceeding in which a hearing has been ordered by the Commission may request the issuance of a subpoena to a covered person pursuant to § 3013.11.

* * * * *

(2) Requests for subpoenas under this section shall be made by written motion filed with the presiding officer in the manner provided in § 3010.160 of this chapter. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address, and business phone number of the persons to whom the request has been transmitted.

(3) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other participant. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3010.160(b) of this chapter.

(4) The presiding officer shall forward copies of the motion and any responses to the Commission together with a recommendation of whether or not the requested subpoena should be issued and, if so, the scope and content thereof and conditions, if any, that should be placed on the subpoena. Copies of the presiding officer's recommendation shall be served in accordance with § 3010.127 of this chapter.

* * * * *

(b) *Procedure for requesting and issuing subpoenas when no hearings have been ordered.* Any person may request the issuance of a subpoena to a covered person pursuant to § 3013.11 to enforce an information request issued by the Commission or a Commissioner even though no hearings have been ordered by the Commission.

(1) A request for the issuance of a subpoena shall be made by motion as provided by § 3010.160 of this chapter. A copy of the request shall be served upon the Postal Service as provided by § 3010.127 of this chapter and by forwarding a copy to the General Counsel of the Postal Service, or such other person authorized to receive process by personal service, by Express Mail or Priority Mail, or by First-Class Mail, Return Receipt requested. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address and business phone number of the persons to whom the request has been transmitted. Proof of service of the request shall be filed with the Secretary by the person requesting the subpoena. The Secretary shall issue a notice of the filing of proof of service and the deadline for filing answers to the request.

(2) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other person. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3010.160(b) of this chapter.

* * * * *

■ 70. Amend newly redesignated § 3013.14 by revising paragraphs (a)(1), (2), and (4), (b)(1) introductory text, and (b)(2) to read as follows:

§ 3013.14 Service of subpoenas.

(a) * * *

(1) *Existing Postal Service officers and employees.* In addition to electronic service as provided by § 3010.127(a) of this chapter, subpoenas directed to existing Postal Service officers and employees must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to the existing officers and employees responsible for providing the information being sought by the subpoena. Subpoenas served upon the Postal Service and transmitted to Postal Service officers and employees shall be accompanied by a written notice of the return date of the subpoena.

(2) *Existing Postal Service agents and contractors.* In addition to electronic service as provided by § 3010.127(a) of this chapter, subpoenas directed to existing Postal Service agents and contractors must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to existing agents and contractors responsible for providing the information being sought by the subpoena. Service upon such agents and contractors shall be accompanied by a written notice of the return date of the subpoena.

* * * * *

(4) *Service arrangements.* Arrangements for service upon the Postal Service under paragraph (a)(1) of this section or upon former Postal Service officers, employees, agents, or contractors under paragraph (a)(3) of this section shall be arranged either by the Commission or by the third party who requested issuance of the subpoena.

(b) * * *

(1) *Return of service.* Proof of service under paragraph (a) of this section must be filed with the Secretary within two business days following service, unless a shorter or longer period is ordered by the Commission, and must be accompanied by certifications of:

* * * * *

(2) *Proof of transmission.* The Postal Service shall within two business days of transmission of a subpoena by the Postal Service to an existing Postal Service officer, employee, agent, or contractor pursuant to paragraph (a)(1) or (2) of this section, or such shorter or longer period ordered by the Commission, file with the Secretary a certification of:

* * * * *

■ 71. Amend newly redesignated § 3013.15 by revising paragraph (f) to read as follows:

§ 3013.15 Duties in responding to a subpoena.

* * * * *

(f) Request for confidential treatment of information shall be made in accordance with part 3011 of this chapter.

■ 72. Revise the newly redesignated appendix A to part 3013 to read as follows:

Appendix A to Part 3013—Subpoena Form

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268–0001

In the Matter of:

[Case Name—If Applicable] [Docket No.—If Applicable]
[Report Name—If Applicable]

SUBPOENA

TO:

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to provide testimony in the above matter.

PLACE OF TESTIMONY	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above matter.

PLACE OF DEPOSITION	DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (attach additional sheet if necessary).

PLACE	DATE AND TIME

ISSUING OFFICIAL'S SIGNATURE	DATE
ISSUING OFFICIAL'S NAME AND PHONE NUMBER	
ISSUING OFFICIAL IS (CHECK ONE): ☐ CHAIRMAN ☐ COMMISSIONER DESIGNATED BY THE CHAIRMAN ☐ ADMINISTRATIVE LAW JUDGE APPOINTED UNDER 5 U.S.C. 3105	
I HEREBY CERTIFY THAT THE MAJORITY OF THE COMMISSIONERS CURRENTLY HOLDING OFFICE HAVE PREVIOUSLY CONCURRED IN WRITING WITH THE ISSUANCE Of THIS SUBPOENA.	
ISSUING OFFICIAL'S SIGNATURE	DATE

39 CFR 3013.15:

(a) A covered person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a covered person responding to a subpoena must produce the information in a form or forms in which the covered person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A covered person responding to a subpoena need not produce the same electronically stored information in more than one form.

(d) A covered person commanded to produce and permit inspection or copying of designated electronically stored information, books, papers, or documents need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

■ 73. Add a new part 3020 to read as follows:

PART 3020—RULES APPLICABLE TO REQUESTS FOR CHANGES IN THE NATURE OF POSTAL SERVICES

Sec.

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

§ 3020.101 Applicability.

The rules in this part govern the procedure with regard to proposals of the Postal Service pursuant to 39 U.S.C. 3661 requesting from the Commission an advisory opinion on changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in part 3010 of this chapter are also applicable to proceedings conducted pursuant to this subpart except that §§ 3010.160 through 3010.164 (Motions); § 3010.310 (Discovery—general policy); § 3010.311 (Interrogatories for purposes of discovery); § 3010.312 (Requests for production of documents or things for the purpose of discovery); § 3010.321 (Hearings); § 3010.325 (Depositions); and § 3010.330 (Briefs) of this chapter do not apply in proceedings conducted under this part.

§ 3020.102 Advisory opinion and special studies.

(a) *Issuance of opinion.* In the absence of a determination of good cause for extension, the Commission shall issue an advisory opinion in proceedings conducted under this subpart not later than 90 days following the filing of the Postal Service's request for an advisory opinion.

(b) *Special studies.* Advisory opinions shall address the specific changes proposed by the Postal Service in the nature of postal services. If, in any proceeding, alternatives or related issues of significant importance arise, the Commission may, in its discretion, undertake an evaluation of such alternative or issues by means of special studies, public inquiry proceedings, or other appropriate means.

§ 3020.103 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the term *day* means a calendar day unless explicitly specified otherwise. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor Federal holiday.

§ 3020.104 Service by the Postal Service.

By filing its request electronically with the Commission, the Postal Service is deemed to have effectively served copies of its formal request and its prepared direct evidence upon those persons, including the officer of the Commission, who participated in the pre-filing conference held under § 3020.111. The Postal Service shall be required to serve hard copies of its formal request and prepared direct evidence only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission's website.

§ 3020.105 Motions.

(a) *In general.* (1) An application for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion. A motion shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of subpart B to part 3010 of this chapter. A motion to dismiss proceedings or any other motion that involves a final determination of the proceeding, any motion under § 3020.121, and a motion that seeks to extend the deadline for issuance of an advisory opinion shall be addressed to the Commission. After a presiding officer is designated in a proceeding, all other motions in that proceeding, except those filed under part 3011 of this chapter, shall be addressed to the presiding officer.

(2) Within five days after a motion is filed, or such other period as the Commission or presiding officer in any proceeding under this subpart may establish, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to subpart B to part 3010 of this chapter. Such an answer shall state with specificity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(b) *Motions to be excused from answering discovery requests.* (1) A motion to be excused from answering discovery requests shall be filed with the Commission within three days of the filing of the interrogatory, request for production, or request for admission to which the motion is directed. If a motion to be excused from answering is made part of an interrogatory, request for production, or request for admission, the part to which objection is made shall be clearly identified. Claims of privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. Claims of undue burden shall state with particularity the effort that would be required to answer or respond to the request, providing estimates of costs and workhours required, to the extent possible.

(2) An answer to a motion to be excused from answering a discovery request shall be filed within two days of the filing of the motion. The text of the discovery request and any answer previously provided by the Postal Service shall be included as an attachment to the answer.

(3) Unless the Commission or presiding officer grants the motion to be excused from answering, the Postal Service shall answer the interrogatory, production request, or request for admission. Answers shall be filed in conformance with subpart B to part 3010 of this chapter within three days of the date on which a motion to be excused from answering is denied.

(4) The Commission or presiding officer may impose such terms and conditions as are just and may, for good cause, issue a protective order, including an order limiting or conditioning interrogatories, requests for production, and requests for admission as justice requires to protect the Postal Service from undue annoyance, embarrassment, oppression, or expense.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. A motion to strike testimony or exhibit materials must be submitted in writing at least three days before the scheduled appearance of a witness, unless good cause is shown. Responses to motions to strike are due within two days.

(d) *Motions for leave to file surrebuttal testimony.* Motions for leave to file surrebuttal testimony submitted pursuant to § 3020.121 and any answers thereto must be filed on or before the dates provided in the procedural schedule established by the Commission.

§§ 3020.106—3020.109 [Reserved]

§ 3020.110 Procedural schedule.

(a) *Notice.* Subject to paragraph (b) of this section, the Commission shall include in the notice of proceeding issued under § 3010.151 of this chapter a procedural schedule based upon the pro forma schedule set forth in appendix A of this part. The procedural schedule shall include:

(1) A deadline for notices of interventions;

(2) The date(s) for the mandatory technical conference between the Postal Service, Commission staff, and interested parties;

(3) The deadline for discovery on the Postal Service's direct case;

(4) The deadline for responses to participant in discovery on the Postal Service's case;

(5) The deadline for participants to confirm their intent to file a rebuttal case;

(6) The date for filing participant rebuttal testimony, if any;

(7) The dates for filing motions for leave to file surrebuttal testimony and answers thereto;

(8) The date for filing surrebuttal, if any;

(9) The date(s) for hearings on the Postal Service's direct case, rebuttal testimony, and surrebuttal testimony, if any;

(10) The date for filing initial briefs;

(11) The date for filing reply briefs; and

(12) A deadline for issuance of an advisory opinion which is 90 days from the date of filing.

(b) *Changes for good cause.* These dates are subject to change for good cause only.

(c) *Incomplete request.* If at any time the Commission determines that the Postal Service's request is incomplete or that changes made subsequent to its filing significantly modify the request, the Commission may extend the deadlines established or take any other action as justice may require.

§ 3020.111 Pre-filing requirements.

(a) *Pre-filing conference required.* Prior to the Postal Service filing a request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to the procedures established in this subpart, the Postal Service shall conduct one or more pre-filing conference(s) with interested persons in the proceeding and shall make a good faith effort to address the concerns of such persons.

(b) *Purpose.* The purpose of a pre-filing conference is to expedite consideration of the Postal Service's request for the issuance of advisory opinions by informing interested persons of the Postal Service's proposal; by providing an opportunity for interested persons to give feedback to the Postal Service that can be used by the Postal Service to modify or refine its proposal before it is filed at the Commission; and by identifying relevant issues and information needed to address those issues during proceedings at the Commission.

(c) *Rationale for the proposal.* The Postal Service shall make available at the pre-filing conference a representative capable of discussing the policy rationale behind the Postal Service's proposal with interested persons.

(d) *Notice.* The Postal Service shall file with the Commission a notice of its intent to conduct any pre-filing conference(s) at least ten days before the first scheduled conference. The notice filed by the Postal Service shall include a schedule of proposed date(s) and location(s) for the conference(s). Upon receipt of such notice, the Commission shall issue a notice of pre-filing conference(s), which shall be published in the **Federal Register**, and appoint a Public Representative.

(e) *Nature of conferences.* Discussions during the pre-filing conference(s) shall be informal and off the record. No formal record will be created during a pre-filing conference.

(f) *Noncompliance.* If the Postal Service's noncompliance with the requirements of the pre-filing conference under § 3020.113(b)(4) is established by a participant, the Commission may, in its discretion, consider an extension of, or modification to, the procedural schedule.

(g) *Informal meetings.* Interested persons may meet outside the context of a pre-filing conference, among themselves or with the Postal Service, individually or in groups, to discuss the proposed changes in the nature of postal services.

§ 3020.112 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of subpart B to part 3010 of this chapter and § 3020.113. The request shall be filed not less than 90 days before the proposed effective date of the change in the nature of postal services involved. Within five days after the Postal Service has filed a formal request for an advisory opinion in accordance with this section, the Secretary shall lodge a notice thereof with the director of the Office of the Federal Register for publication in the **Federal Register**.

§ 3020.113 Contents of formal requests.

(a) *General requirements.* A formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and interested persons of the nature, scope, significance, and impact of the proposed change in the nature of postal services and to show that the change in the nature of postal services is in accordance with and conforms to the policies established under title 39, United States Code.

(b) *Specific information.* A formal request shall include:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code;

(4) A statement that the Postal Service has completed the pre-filing conference(s) required by § 3020.111, including the time and place of each conference and a certification that the Postal Service has made a good faith effort to address concerns of interested persons about the Postal Service's proposal raised at the pre-filing conference(s);

(5) The prepared direct evidence required by § 3020.114;

(6) The name of an institutional witness capable of providing information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses; and

(7) Confirmation that Postal Service witnesses, including its institutional witness, will be available for the mandatory technical conference provided for in § 3020.115.

(c) *Additional information.* The Commission may request additional information from the Postal Service concerning a formal request.

(d) *Reliance on prepared direct evidence.* The Postal Service may incorporate detailed data, information, and statements of reason or basis

contained in prepared direct evidence submitted under paragraph (b)(5) of this section into its formal request by reference to specific portions of the prepared direct evidence.

§ 3020.114 Filing of prepared direct evidence.

As part of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with §§ 3010.322 and 3010.323 of this chapter.

§ 3020.115 Mandatory technical conference.

(a) *Date.* A date for a mandatory technical conference shall be included in the procedural schedule required by § 3020.110. The date for this technical conference shall be set based upon the pro forma schedule set forth in appendix A to this part. The conference shall be held at the offices of the Commission.

(b) *Witnesses.* The Postal Service shall make available at the technical conference each witness whose prepared direct testimony was filed pursuant to § 3020.114. If the Postal Service seeks for any witness to be excused on the basis that the witness's testimony neither presents nor is based upon technical information, it shall make such a motion concurrent with its request.

(c) *Purpose.* The purpose of the technical conference is to provide an informal, off-the-record opportunity for participants, the officer of the Commission representing the interests of the general public, and Commission staff to clarify technical issues and to identify and request information relevant to an evaluation of the nature of changes to postal services proposed by the Postal Service. The technical conference is not part of the formal record in the proceeding.

(d) *Relation to discovery process.* Information obtained during the mandatory technical conference may be used to discover additional relevant information by means of the formal discovery mechanisms provided for in §§ 3020.116 through 3020.119.

(e) *Record.* Information obtained during, or as a result of, the mandatory technical conference is not part of the decisional record unless admitted under the standards of § 3010.322(a) of this chapter.

§ 3020.116 Discovery—in general.

(a) *Purpose.* The rules in this subpart allow discovery that is reasonably calculated to lead to admissible evidence during a proceeding. The notice and scheduling order issued pursuant to § 3020.110 shall provide that discovery will be scheduled to end at least three days prior to the commencement of hearings.

(b) *Informal discovery.* The discovery procedures in this section and §§ 3020.117 through 3020.119 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, or by other appropriate means. In the interest of reducing motion practice, participants also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) *Failure to obey orders or rulings.* If a participant fails to obey an order of the Commission or ruling of presiding officer to provide or permit discovery pursuant to this section or §§ 3020.117 through 3020.119, the Commission or the presiding officer may issue orders or rulings in regard to the failure as are just. These orders or rulings may, among other things:

(1) Direct that certain designated facts are established for the purposes of the proceeding;

(2) Prohibit a participant from introducing certain designated matters in evidence;

(3) Strike certain evidence, requests, pleadings, or parts thereof; or

(4) Such other relief as the Commission deems appropriate.

§ 3020.117 Interrogatories.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant in a proceeding may propound to any other participant no more than a total of 25 written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter of the proceeding. An interrogatory with subparts that are logically or factually subsumed within and necessarily related to the primary question will be counted as one interrogatory. The respondent shall answer each interrogatory and furnish such information as is available. The participant propounding the interrogatories shall file them with the Commission in conformance with part 3010, subpart B, of this chapter. Follow-up interrogatories that clarify or elaborate on the answer to an earlier discovery request may be filed after the period for intervenor discovery on the Postal Service case ends, if the interrogatories are filed within seven days of receipt of the answer to the previous interrogatory. In extraordinary circumstances, follow-up interrogatories may be filed not less than six days prior to the filing date for the participant's rebuttal or surrebuttal testimony.

(b) *Answers.* (1) Answers to interrogatories shall be prepared so that they can be incorporated into the record as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who propounded the interrogatory, and the number and text of the question.

(2) Each interrogatory shall be answered separately and fully in writing by the individual responsible for the answer, unless it is objected to, in which event the reasons for objection shall be stated in a motion to be excused from answering in the manner prescribed by paragraph (c) of this section.

(3) An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact.

(4) Answers filed by a respondent shall be filed in conformance with subpart B to part 3010 of this chapter within seven days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer. Any other period fixed by the Commission or presiding officer shall end before the conclusion of the hearing.

(c) *Motion to be excused from answering.* A respondent may, in lieu of answering an interrogatory, file a motion pursuant to § 3020.105(b) to be excused from answering.

(d) *Supplemental answers.* A respondent has a duty to timely amend a prior answer if it obtains information upon the basis of which it knows that the answer was incorrect when made or is no longer true. A respondent shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. A respondent shall indicate whether the answer merely supplements the

previous answer to make it current or whether it is a complete replacement for the previous answer.

§ 3020.118 Production of documents.

(a) *Service and contents.* (1) In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant a request to produce and permit the participant making the request, or someone acting on behalf of the participant, to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding and that are in the custody or control of the respondent.

(2) The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place, and manner of making inspection. The participant requesting the production of documents or items shall file its request with the Commission in conformance with part 3010, subpart B, of this chapter.

(b) *Answers.* (1) The respondent shall file an answer to a request under paragraph (a) of this section with the Commission in conformance with subpart B to part 3010 of this chapter within seven days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, whether inspection will be permitted as requested.

(2) If the respondent objects to an item or category, it shall state the reasons for objection in a motion to be excused from answering as prescribed by paragraph (c) of this section.

(c) *Motions to be excused from answering.* A respondent may, in lieu of answering a request for production, file a motion pursuant to § 3020.105(b) to be excused from answering.

§ 3020.119 Admissions.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The admission shall be for purposes of the pending proceeding only. The participant requesting the admission shall file its request with the Commission in conformance with subpart B to part 3010 of this chapter.

(b) *Answers.* (1) A matter for which admission is requested shall be separately set forth in the request and is deemed admitted unless, within seven days after the request is filed, or within such other period as may be established by the Commission or presiding officer, the respondent files a written answer or motion to be excused from answering pursuant to paragraph (c) of this section. Answers to requests for admission shall be filed with the Commission in conformance with subpart B to part 3010 of this chapter.

(2) If the answer filed by the respondent does not admit a matter asserted in the participant's request, it must either specifically deny the matter or explain in detail why it cannot truthfully admit or deny the asserted matter. When good faith requires, the respondent must admit a portion of the asserted matter and either deny or qualify the remaining portion of such asserted matter. Lack of knowledge for failing to admit or deny can be invoked only after reasonable inquiry if the information already possessed or reasonably obtainable is insufficient to enable an admission or denial.

(3) Grounds for objection to requests for admission must be stated. Objections cannot be based solely upon the ground that the request presents a genuine issue for trial.

(c) *Motion to be excused from answering.* A respondent may, in lieu of answering a request for admission, file a motion pursuant to § 3020.105(b) to be excused from answering.

§ 3020.120 Rebuttal testimony.

(a) *Timing.* Any participant may file rebuttal testimony on or before the date established for that purpose by the procedural schedule issued by the Commission pursuant to § 3020.110. Hearing on rebuttal testimony shall proceed as set forth in the procedural schedule.

(b) *Limitations.* The scope of rebuttal testimony shall be limited to material issues relevant to the specific proposal made by the Postal Service. Rebuttal testimony shall not propose, or seek to address, alternatives to the Postal Service's proposal.

(c) *Intent to file rebuttal testimony.* If a participant wishes to file rebuttal testimony, it must file a document confirming its intent to file rebuttal testimony with the Commission by the date provided in the procedural schedule.

(d) *Adjustment of dates.* If no participant files a confirmation of intent to file rebuttal testimony on or before the date established by the procedural schedule issued by the Commission pursuant to § 3020.110, the Commission may adjust other dates in the procedural schedule as it deems to be necessary and appropriate.

§ 3020.121 Surrebuttal testimony.

(a) *Scope.* Surrebuttal testimony shall be limited to material issues relevant to the Postal Service's proposal and to the rebuttal testimony which the surrebuttal testimony seeks to address. Testimony that exceeds the scope of the Postal Service's proposal or rebuttal testimony shall not be permitted.

(b) *Motion for leave to file surrebuttal.* A participant who wishes to file surrebuttal testimony must obtain prior approval by filing with the Commission a motion for leave to file surrebuttal pursuant to § 3020.105(d) on or before the date provided in the procedural schedule established by the Commission. The motion must summarize the surrebuttal testimony the participant wishes to file and must identify and explain exceptional circumstances that require the filing of such testimony. The moving participant bears the burden of demonstrating exceptional circumstances that warrant a grant of the motion. Answers to such motions may be filed as provided in § 3020.105(d).

(c) *Deadline for filing surrebuttal authorized by the Commission.* In the event the Commission grants the motion for leave to file surrebuttal testimony, the moving participant must file its proposed surrebuttal testimony by the date provided in the procedural schedule established pursuant to § 3020.110.

(d) *Adjustment of procedural dates.* If no participant files a motion for leave to file surrebuttal testimony, or if the Commission denies all such motions as may be filed, the remaining dates in the procedural schedule may be adjusted by the Commission as it deems to be necessary and appropriate.

§ 3020.122 Hearings.

(a) *Initiation.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice and scheduling order pursuant to § 3020.110.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting *en banc* with a duly designated presiding officer.

(c) *Entering of appearances.* The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

(d) *Order of procedure.* In requests for advisory opinions before the Commission, the Postal Service shall be the first participant to present its case. Unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of all other participants and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) *Presentation of the evidence*—(1) *Presentations by participants.* Each participant shall have the right in public hearings to present evidence relevant to the Postal Service's proposal, cross-examine (limited to testimony adverse to the participant conducting the cross-examination), object, move, and argue. The participant's presentation shall be in writing and may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination shall be served in accordance with part 3010, subpart B, of this chapter no later than three days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''PR–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)''). When a participant designates written cross-examination, two hard copies of the documents (unfastened, single-spaced, not hole-punched) are to be included and shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will not be admitted into the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination shall be filed three or more days before the announced appearance of the witness and shall include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits shall be filed at least two days (including one working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant shall be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness. Cross-examination exhibits shall be delivered to counsel for the witness at least two days (including one working day) before the scheduled appearance of the witness.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately:

(1) The number of witnesses to be heard upon any issue;

(2) The examination by any participant to specific issues; and

(3) The cross-examination of a witness to that required for a full and true disclosure of the facts necessary for exploration of the Postal Service's proposal, disposition of the proceeding, and the avoidance of irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* Except as provided in § 3020.105(a), after a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefore and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any motion not reserved for decision by the Commission in § 3020.105(a). This section shall not preclude a presiding officer from referring any motion made in hearing to the Commission for ultimate determination.

(i) *Transcript corrections.* Corrections to the transcript of a hearing shall not be requested except to correct a material substantive error in the transcription made at the hearing.

(j) *Field hearings.* Field hearings will not be held except upon a showing by any participant and determination by the Commission that there is exceptional need or utility for such a hearing which cannot be accomplished by alternative means.

§ 3020.123 Initial and reply briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, participants may file initial and reply briefs. The dates for filing initial and reply briefs shall be established in the procedural schedule issued pursuant to § 3020.110. Such dates may be modified by subsequent order issued by the Commission or the presiding officer.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request;

(4) A discussion of the evidence, reasons, and authorities relied upon with precise references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Length.* Initial briefs filed by all participants other than the Postal Service shall not exceed 14,000 words.

Initial briefs filed by the Postal Service shall not exceed 21,000 words. Reply briefs filed by all participants other than the Postal Service shall not exceed 7,000 words. Reply briefs filed by the Postal Service shall not exceed 10,500 words. All participants shall attest to the number of words contained in their brief. Tables of cases, tables of citations, and appendices shall not be considered as part of the word count.

(d) *Include by reference.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(e) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(f) *Filing and service.* Briefs shall be filed in the form and manner and served as required by subpart B to part 3010 of this chapter.

(g) *Statements of Position.* As an alternative to filing a formal brief, a participant may file a Statement of Position. To the extent practicable, the contents of each Statement of Position should include a clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request, as well as any points or factors in the existing record that support the participant's position. Statements of Position shall be limited to the existing record and shall not include any new evidentiary material.

Appendix A to Part 3020—Pro Forma N-Case Procedural Schedule

Line	Action	Day number
1	Pre-Filing Consultations[1]	n/a.
2	Commission Order[2]	n/a.
3	Filing of Postal Service Request	0.
4	Commission Notice and Order[3]	1–3.
5	Technical Conference	10.
6	Participant Discovery on Postal Service Case Ends	28.
7	Responses to Participant Discovery on Postal Service Case	35.
8	Participants Confirm Intent to File a Rebuttal Case	37.[4]
9	Filing of Rebuttal Cases (if submitted)	42.
10	Deadline for Motions to Leave to File Surrebuttal	44.[5]
11	Deadline for Answers to Motions for Surrebuttal	46.
12	Filing of Surrebuttal Cases (if authorized)	49.[6]
13	Hearings	
	Hearings (with no Rebuttal Cases)	42–44.
	Hearings (with Rebuttal Cases, but no requests for leave to file Surrebuttal Cases)	49–51.
	Hearings (with Rebuttal Cases and requests for leave to file Surrebuttal Cases)	54–56.
14	Initial Briefs	(7 days after conclusion of hearings).
15	Reply Briefs	(7 days after filing of Initial Briefs).
16	Target Issuance Date of Advisory Opinion	90.

[1] The Postal Service would initiate pre-filing consultations and would file a notice with the Commission of such consultations prior to their commencement.
[2] This order would appoint a Public Representative.
[3] This notice and order would announce the Postal Service request, set a deadline for interventions, set a date for a technical conference, and establish a procedural schedule.
[4] If no participant elects to file a rebuttal case, hearings begin on Day 42.
[5] If no surrebuttal cases are requested, hearings begin on Day 49.
[6] If one or more surrebuttal cases are requested (whether or not authorized by the Commission), hearings begin on Day 54.

PART 3021—RULES FOR APPEALS OF POSTAL SERVICE DETERMINATIONS TO CLOSE OR CONSOLIDATE POST OFFICES

■ 74. The authority for newly redesignated part 3021 continues to read as follows:

Authority: 39 U.S.C. 404(d).

■ 75. Amend newly redesignated § 3021.2 by revising paragraph (b) to read as follows:

§ 3021.2 Applicability.

* * * * *

(b) Subparts A through D to part 3010 of this chapter apply to appeals of post office closings or consolidations.

* * * * *

■ 76. Amend newly redesignated § 3021.13 by revising paragraph (a) to read as follows:

§ 3021.13 Deadlines for appeals.

(a) *In general.* If the Postal Service has issued a final determination to close or consolidate a post office, an appeal is due within 30 days of the final determination being made available in conformance with § 3021.3(b).

* * * * *

■ 77. Revise newly redesignated § 3021.14 to read as follows:

§ 3021.14 Participation by others.

(a) A person served by the post office to be closed or consolidated pursuant to the Postal Service written determination under review who desires to intervene in the proceeding, or any other interested person, or any counsel, agent, or other person authorized or recognized by the Postal Service as such interested person's representative or the representative of such interested person's recognized group, such as Postmasters, may participate in an appeal by sending written comments to the Postal Regulatory Commission in the manner described in § 3021.11.

(b) Persons may submit comments supporting or opposing a Commission order returning the entire matter to the Postal Service for further consideration. Comments must be filed in accordance with the deadlines established in §§ 3021.41 through 3021.43. Commenters may use PRC Form 61, which is available on the Commission's website, *http://www.prc.gov.*

■ 78. Amend newly redesignated § 3021.40 by revising paragraph (a) to read as follows:

§ 3021.40 Participant statement.

(a) When a timely Petition for Review of a decision to close or consolidate a post office is filed, the Secretary shall furnish petitioner with a copy of PRC Form 61. This form is designed to inform petitioners on how to make a

statement of the petitioner's arguments in support of the petition.

* * * * *

PART 3022—RULES FOR COMPLAINTS

■ 79. The authority for newly redesignated part 3022 reads as follows:

Authority: 39 U.S.C. 503; 3622.

■ 80. Revise newly redesignated § 3022.1 to read as follows:

§ 3022.1 Applicability.

(a) The rules in this part govern the procedure for complaints filed under 39 U.S.C. 3662 that meet the form and manner requirements of subpart B of this part. Part 3010 of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Subpart E to part 3010 of this chapter does not apply to this part unless and until the Commission makes a finding under § 3022.30(a)(1) that the complaint raises material issues of fact or law and that the issues shall be considered through a hearing on the record.

■ 81. Amend newly redesignated § 3022.10 by revising paragraph (a)(10) to read as follows:

§ 3022.10 Complaint contents.

(a) * * *

(10) Include a certification that the complaint has been served on the United States Postal Service as required by § 3022.11.

* * * * *

■ 82. Revise newly redesignated § 3022.11 to read as follows:

§ 3022.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at this address: *PRCCOMPLAINTS@usps.gov.* A person without internet access may contact the Secretary to obtain approval for alternative methods of service.

■ 83. Amend newly redesignated § 3022.12 by revising paragraph (b)(2) to read as follows:

§ 3022.12 Pleadings filed in response to a complaint.

* * * * *

(b) * * *

(2) If the Commission invokes the rate or service inquiry special procedures under § 3022.13 to the complaint, the answer is due contemporaneously with the Postal Service's report under § 3023.11 of this chapter if the complaint has not been resolved by that date.

* * * * *

■ 84. Amend newly redesignated § 3022.13 by revising paragraphs (b) and (c) to read as follows:

§ 3022.13 Conditions for applying rate or service inquiry procedures to complaints.

* * * * *

(b) The Commission may in its discretion, *sua sponte,* attempt to resolve a complaint through the rate or service inquiry procedures of § 3023.11 of this chapter if the Commission finds that there is a reasonable likelihood that such procedures may result in resolution of the complaint. The Commission will issue an order to apply the procedures of § 3023.11 of this chapter prior to the due date for the Postal Service answer set forth in § 3022.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the Postal Service is unable to resolve the complaint within 45 days, or such other period of time as ordered by the Commission, the Postal Service shall file its answer in accordance with § 3022.12(b)(2).

■ 85. Revise newly redesignated § 3022.20 to read as follows:

§ 3022.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines that additional information is necessary to enable it to evaluate whether the complaint raises material issues of fact or law, the Commission shall, in its discretion, either require the complainant and/or the Postal Service to provide additional information as deemed necessary, issue an appropriate order to appoint an investigator in accordance with § 3022.21, or do both.

■ 86. Amend newly redesignated § 3022.30 by revising paragraph (a)(1) to read as follows:

§ 3022.30 Beginning proceedings on complaints.

(a) * * *

(1) A notice and order in accordance with § 3010.151 of this chapter that finds the complaint raises one or more material issues of fact or law and begin proceedings on the complaint; or

* * * * *

■ 87. Amend newly redesignated § 3022.41 by revising paragraph (a) introductory text to read as follows:

§ 3022.41 Satisfaction.

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under § 3022.30(a)(1), the complainant must promptly file:

* * * * *

PART 3023—RULES FOR RATE OR SERVICE INQUIRIES

■ 88. The authority for newly redesignated part 3023 continues to read as follows:

Authority: 39 U.S.C. 503; 3662.

■ 89. Amend newly redesignated § 3023.11 by revising paragraph (b) to read as follows:

§ 3023.11 Rate or service inquiry procedures.

* * * * *

(b) The Commission will monitor all rate or service inquiries to determine if Commission action under § 3023.12 is appropriate.

* * * * *

■ 90. Revise newly redesignated § 3023.12 to read as follows:

§ 3023.12 Treatment as a complaint.

If the Commission receives a volume of rate or service inquiries on the same or similar issue such that there may be cause to warrant treatment as a complaint, it may appoint an investigator to review the matter under § 3022.21 of this chapter or appoint a Public Representative representing the interests of the general public to pursue the matter.

PART 3024—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404a

■ 91. The authority for newly redesignated part 3024 continues to read as follows:

Authority: 39 U.S.C. 404a; 3662.

■ 92. Revise newly redesignated § 3024.1 to read as follows:

§ 3024.1 Applicability.

The rules in this part govern proceedings filed under 39 U.S.C. 3662 alleging violations of 39 U.S.C. 404a that meet the requirements of §§ 3022.2 and 3022.10 of this chapter.

■ 93. Amend newly redesignated § 3024.5 by revising paragraph (a) introductory text to read as follows:

§ 3024.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:

* * * * *

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

■ 94. The authority for newly redesignated part 3030 continues to read as follows:

Authority: 39 U.S.C. 503; 3622.

■ 95. Amend newly redesignated § 3030.501 by revising paragraphs (b)(1) through (3), (d), (e), (h) through (l), and (m)(1) and (2) to read as follows:

§ 3030.501 Definitions.

* * * * *

(b) * * *

(1) In the case of a notice of a Type 1–A or Type 1–B rate adjustment filed 12 or more months after the last Type 1–A or Type 1–B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3030.521;

(2) In the case of a notice of a Type 1–A or Type 1–B rate adjustment filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3030.522; and

(3) In the case of a notice of a Type 1–C rate adjustment, the annual limitation calculated pursuant to § 3030.521 or § 3030.522, as applicable, for the most recent notice of a Type 1–A or Type 1–B rate adjustment.

* * * * *

(d) *De minimis rate increase* means a rate adjustment described in § 3030.530.

(e) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type1–A or Type 1–B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3030.520.

* * * * *

(h) *Type 1–A rate adjustment* means a rate adjustment described in § 3030.504.

(i) *Type 1–B rate adjustment* means a rate adjustment described in § 3030.505.

(j) *Type 1–C rate adjustment* means a rate adjustment described in § 3030.506.

(k) *Type 2 rate adjustment* means a rate adjustment described in § 3030.507.

(l) *Type 3 rate adjustment* means a rate adjustment described in § 3030.508.

(m) * * *

(1) In the case of a Type 1–A or Type 1–B rate adjustment, the percentage calculated pursuant to § 3030.526; and

(2) In the case of a Type 1–C rate adjustment, the percentage calculated pursuant to § 3030.527.

■ 96. Amend newly redesignated § 3030.504 by revising paragraph (c) to read as follows:

§ 3030.504 Type 1–A rate adjustment—in general.

* * * * *

(c) A Type 1–A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment for that class, subject to the expiration terms in § 3030.526(e).

■ 97. Amend newly redesignated § 3030.506 by revising paragraph (b)(1) to read as follows:

§ 3030.506 Type 1–C rate adjustment—in general.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, a Type 1–C rate adjustment may generate unused rate adjustment authority, as described in § 3030.527.

* * * * *

■ 98. Amend newly redesignated § 3030.511 by revising paragraphs (b)(1) and (2), (d), and (k) to read as follows:

§ 3030.511 Proceedings for Type 1–A, Type 1–B, and Type 1–C rate adjustment filings.

* * * * *

(b) * * *

(1) Whether the planned rate adjustments measured using the formula established in § 3030.523(c) are at or below the annual limitation calculated under § 3030.521 or § 3030.522, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3030.523(c) are at or below the limitation established in § 3030.29.

* * * * *

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3030.521 or § 3030.522, as applicable, the limitation set forth in § 3030.529, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

* * * * *

(k) A Commission finding that a planned Type 1–A, Type 1–B, or Type 1–C rate adjustment is in compliance with the annual limitation calculated under § 3030.521 or § 3030.522, as applicable; the limitation set forth in § 3030.529; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1–A, Type 1–B, or Type 1–C rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

■ 99. Amend newly redesignated § 3030.512 by revising paragraphs (b)(1), (3), and (4), (b)(9)(ii), and (e) to read as follows:

§ 3030.512 Contents of notice of rate adjustment.

* * * * *

(b) * * *

(1) The annual limitation calculated as required by § 3030.521 or § 3030.522, as appropriate. This information must be supported by workpapers in which all calculations are shown and all input values, including all relevant CPI–U values, are listed with citations to the original sources.

* * * * *

(3) The percentage change in rates for each class of mail calculated as required by § 3030.523. This information must be supported by workpapers in which all calculations are shown and all input values, including current rates, new rates, and billing determinants, are listed with citations to the original sources.

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by § 3030.526 or § 3030.527, as applicable. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.

* * * * *

(9) * * *

(ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3030.523(e) or § 3030.524.

* * * * *

(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3030.528. All calculations are to be shown, including citations to the original sources.

* * * * *

■ 100. Amend newly redesignated § 3030.520 by revising paragraphs (b) and (d)(2) to read as follows:

§ 3030.520 Calculation of maximum rate adjustment.

* * * * *

(b) Type 1–A and Type 1–B rate adjustments are subject to an inflation-based annual limitation computed using CPI–U values as detailed in §§ 3030.521(a) and 3030.522(a).

* * * * *

(d) * * *

(2) For a Type 1–B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal

Service elects to use, subject to the limitation under § 3030.529.

* * * * *

■ 101. Amend newly redesignated § 3030.523 by revising paragraph (e)(1) to read as follows:

§ 3030.523 Calculation of percentage change in rates.

* * * * *

(e) * * *

(1) Rate incentives may be excluded from a percentage change in rates calculation. If the Postal Service elects to exclude a rate incentive from a percentage change in rates calculation, the rate incentive shall be treated in the same manner as a rate under a negotiated service agreement (as described in § 3030.524).

* * * * *

■ 102. Amend newly redesignated § 3030.524 by revising paragraph (a) to read as follows:

§ 3030.524 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.

(a) Mail volumes sent at rates under a negotiated service agreement or a rate incentive that is not a rate of general applicability are to be included in the calculation of percentage change in rates under § 3030.523 as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (*e.g.,* because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement or the rate incentive that is not a rate of general applicability shall be excluded from the calculation of percentage change in rates.

* * * * *

■ 103. Revise newly redesignated § 3030.525 to read as follows:

§ 3030.525 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3030.521 or § 3030.522.

■ 104. Amend newly redesignated § 3030.526 by revising paragraphs (b) and (c)(2) to read as follows:

§ 3030.526 Calculation of unused rate adjustment authority for Type 1–A and Type 1–B rate adjustments.

* * * * *

(b) When notices of Type 1–A or Type 1–B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to § 3030.521 or § 3030.522 and the percentage change in rates for the class calculated pursuant to § 3030.523(b)(1).

(c) * * *

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to § 3030.521(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to § 3030.521(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

* * * * *

■ 105. Amend newly redesignated § 3030.527 by revising paragraphs (a), (c), and (d) to read as follows:

§ 3030.527 Calculation of unused rate adjustment authority for Type 1–C rate adjustments.

(a) For a notice of Type 1–C rate adjustment, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the annual limitation calculated pursuant to § 3030.521 or § 3030.522 for the most recent notice of Type 1–A or Type 1–B rate adjustment and the percentage change in rates for the class calculated pursuant to § 3030.523(b)(2) is calculated. Second, the unused rate adjustment authority generated in the most recent Type 1–A or Type 1–B rate adjustment is subtracted from that result.

* * * * *

(c) Unused rate adjustment authority generated under paragraph (a) of this section for a class shall be added to the unused rate adjustment authority generated in the most recent notice of Type 1–A rate adjustment on the schedule maintained under § 3030.526(f). For purposes of § 3030.528, the unused rate adjustment authority generated under paragraph (a) of this section for a class shall be deemed to have been added to the schedule maintained under § 3030.526(f) on the same date as the most recent notice of Type 1–A or Type 1–B rate adjustment.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under § 3030.529, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

■ 106. Amend newly redesignated § 3030.530 by revising paragraph (b) to read as follows:

§ 3030.530 De minimis rate increases.

* * * * *

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under § 3030.526(f) as a result of a *de minimis* rate increase.

* * * * *

■ 107. Revise newly redesignated § 3030.562 to read as follows:

§ 3030.562 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3030.561 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested.

■ 108. Amend newly redesignated § 3030.563 by revising paragraph (b) to read as follows:

§ 3030.563 Treatment of unused rate adjustment authority.

* * * * *

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in § 3030.528 of this subpart.

* * * * *

■ 109. Amend newly redesignated § 3030.565 by revising paragraph (c) to read as follows:

§ 3030.565 Special procedures applicable to exigent requests.

* * * * *

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with part 3010, subpart B, of this chapter and will become part of the administrative record of the proceeding.

* * * * *

PART 3040—PRODUCT LISTS

■ 110. The authority for newly redesignated part 3040 reads as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 111. Revise newly redesignated § 3040.102 to read as follows:

§ 3040.102 Product lists.

(a) *Market dominant product list.* The market dominant product list shall be published in the **Federal Register** at appendix A to subpart A of part 3040—Market Dominant Product List.

(b) *Competitive product list.* The competitive product list shall be published in the **Federal Register** at

appendix B to subpart A of part 3040—Competitive Product List.

■ 112. Amend newly redesignated § 3040.181 by revising paragraphs (b)(1) and (2) to read as follows:

§ 3040.181 Supporting justification for material changes to product descriptions.

* * * * *

(b)(1) As to market dominant products, explain why the changes are not inconsistent with each requirement of 39 U.S.C. 3622(d) and part 3030 of this chapter; or

(2) As to competitive products, explain why the changes will not result in the violation of any of the standards of 39 U.S.C. 3633 and part 3035 of this chapter.

* * * * *

■ 113. Amend newly redesignated § 3040.190 by revising paragraph (c)(1) to read as follows:

§ 3040.190 Minor corrections to product descriptions.

* * * * *

(c) * * *

(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3040.180;

* * * * *

PART 3045—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

■ 114. The authority for newly redesignated part 3045 continues to read as follows:

Authority: 39 U.S.C. 3641.

■ 115. Amend newly redesignated § 3045.3 by revising paragraphs (a)(1)(ii) and (a)(2)(vi) to read as follows:

§ 3045.3 Contents of notice.

(a) * * *

(1) * * *

(ii) Establish that the introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3010.101(t) of this chapter; and

* * * * *

(2) * * *

(vi) Includes a data collection plan for the market test, including a description of the specific data items to be collected. The minimum data collection plan requirements are described in § 3045.20.

■ 116. Revise newly redesignated § 3045.10 to read as follows:

§ 3045.10 Duration.

A market test may not exceed 24 months in duration unless the Commission authorizes an extension pursuant to a request filed by the Postal Service under § 3045.11.

■ 117. Amend newly redesignated § 3045.15 by revising paragraphs (a) and (b) to read as follows:

§ 3045.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI–U index, as specified in §§ 3030.521(a) and 3030.522(a) of this chapter.

(b) An experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed $10 Million in any fiscal year, as adjusted for the change in the CPI–U index, as specified in paragraph (d) of this section ($10 Million Adjusted Limitation). Total revenues anticipated or received may exceed the $10 Million Adjusted Limitation in any fiscal year if an exemption is granted pursuant to § 3045.16.

* * * * *

■ 118. Amend newly redesignated § 3045.16 by revising paragraph (f)(3) to read as follows:

§ 3045.16 Exemption from dollar amount limitation.

* * * * *

(f) * * *

(3) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including any extension period granted by the Commission in accordance with § 3045.11(c), and provide available supporting documentation; and

* * * * *

■ 119. Revise newly redesignated § 3045.17 to read as follows:

§ 3045.17 Prevention of market disruption.

Notwithstanding the $10 Million Adjusted Limitation or any adjustment granted pursuant to § 3045.16, the Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent the creation of an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3010.101(t) of this chapter.

■ 120. Amend newly redesignated § 3045.18 by revising paragraph (a) to read as follows:

§ 3045.18 Request to add a non-experimental product or price category based on an experimental product to the product list.

(a) If the Postal Service seeks to add a non-experimental product or price category based on a former or current experimental product to the market dominant or competitive product list, the Postal Service shall file a request, pursuant to 39 U.S.C. 3642 and part 3040, subpart B of this chapter, to add a non-experimental product or price category to the applicable product list.

* * * * *

■ 121. Amend newly redesignated § 3045.20 by revising paragraph (a) introductory text to read as follows:

§ 3045.20 Data collection and reporting requirements.

(a) A notice of a market test shall include a data collection plan for the market test as required by § 3045.3(a)(2)(vi). Data collection plans shall include, at a minimum:

* * * * *

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

■ 114. The authority for newly redesignated part 3055 continues to read as follows:

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e); 3657(c).

■ 115. Revise newly redesignated § 3055.1 to read as follows:

§ 3055.1 Annual reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

■ 116. Revise newly redesignated § 3055.30 to read as follows:

§ 3055.30 Periodic reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter).

■ 117. Revise newly redesignated § 3055.90 to read as follows:

§ 3055.90 Reporting of customer satisfaction.

For each market dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a report as

part of the section 3652 report, unless a more frequent filing is specifically indicated, addressing customer satisfaction achievements for the preceding fiscal year. The report shall include, at a minimum, the specific reporting requirements presented in §§ 3055.91 through 3055.92.

PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

■ 118. The authority for newly redesignated part 3060 continues to read as follows:

Authority: 39 U.S.C. 503, 2011, 3633, 3634.

■ 119. Revise newly redesignated § 3060.21 to read as follows:

§ 3060.21 Income report.

The Postal Service shall file an Income Report in the form and content of the table 1 to § 3060.21.

TABLE 1 TO § 3060.21—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01

[$ in 000s]

	FY 20xx	FY 20xx–1	Change from SPLY	Percent change from SPLY
Revenue:	$x,xxx	$x,xxx	$xxx	xx.x
(1) Mail and Services Revenues	xxx	xxx	xx	xx.x
(2) Investment Income	x,xx	x,xxx	xxx	xx.x
(3) Total Competitive Products Revenue	.....	.....	.....	.....
Expenses:	x,xxx	.....	.....	.....
(4) Volume-Variable Costs	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs	x,xxx	x,xxx	xxx	xx.x
(6) Incremental Inframarginal Costs	x,xxx	x,xxx	xxx	xx.x
(7) Total Competitive Products Attributable Costs	x,xxx	x,xxx	xxx	xx.x
(8) Net Contribution Competitive Products Market Tests	x,xxx	x,xxx	xxx	xx.x
(9) Net Income Before Institutional Cost Contribution	x,xxx	x,xxx	xxx	.....
(10) Required Institutional Cost Contribution	x,xxx	x,xxx	xxx	x.x.x
(11) Net Income (Loss) Before Tax	x,xxx	x,xxx	xxx	xx.x
(12) Assumed Federal Income Tax	x,xxx	x,xxx	xxx	xx.x
(13) Net Income (Loss) After Tax	x,xxx	x,xxx	xxx	xx.x

Line (1): Total revenues from Competitive Products volumes and Ancillary Services.
Line (2): Income provided from investment of surplus Competitive Products revenues.
Line (3): Sum total of revenues from Competitive Products volumes, services, and investments.
Line (4): Total Competitive Products volume-variable costs as shown in the Cost and Revenue Analysis (CRA) report.
Line (5): Total Competitive Products product-specific costs as shown in the CRA report.
Line (6): Inframarginal costs calculated as part of total Competitive Products incremental costs as shown in ACR Library Reference ''Competitive Product Incremental and Group Specific Costs'' (Currently NP10).
Line (7): Sum total of Competitive Products costs (sum of lines 4, 5, and 6).
Line (8): Net Contribution Competitive Products Market Tests as shown in the Annual Compliance Report.
Line (9): Difference between Competitive Products total revenues and attributable costs and Market Tests Contributions (line 3 less line 7 plus line 8).
Line (10): Minimum amount of Institutional cost contribution required under 39 CFR 3035.7 of this chapter.
Line (11): Line 9 less line 10.
Line (12): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (13): Line 11 less line 12.

CHAPTER III—[AMENDED]

■ 120. In chapter III of title 39, revise all references to ''website'' to read ''website.''

[FR Doc. 2019–20232 Filed 10–7–19; 8:45 am]

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1915 and 1926
Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1915 and 1926

[Docket No. OSHA–H005C–2006–0870]

RIN 1218–AD29

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors

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

ACTION: Proposed rule; request for comments and notice of public hearing.

SUMMARY: OSHA is proposing to revise the standards for occupational exposure to beryllium and beryllium compounds in the construction and shipyards industries. These proposed changes are designed to accomplish three goals: To more appropriately tailor the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the beryllium standards' requirements and other OSHA standards; to aid compliance and enforcement across the beryllium standards by avoiding inconsistency, where appropriate, between the shipyards and construction standards and proposed revisions to the general industry standard; and to clarify certain requirements with respect to materials containing only trace amounts of beryllium. This proposal would lead to total annualized cost savings of $2.5 million at a 3 percent discount rate over 10 years; at a discount rate of 7 percent over 10 years, the annualized cost savings would be $2.5 million. OSHA has preliminarily determined that these proposed changes would maintain safety and health protections for workers, while facilitating compliance with the standards and yielding some cost savings. This proposal does not affect the general industry beryllium standard.

DATES: *Written Comments:* Written comments on this NPRM must be submitted (postmarked, sent, or received) by November 7, 2019 in Docket Number OSHA–H005C–2006–0870. Comments on the information collection determination described in Section VI of the preamble (OMB Review under the Paperwork Reduction Act of 1995) may be submitted (postmarked, sent, or received) by December 9, 2019 in Docket Number OSHA–2019–0006. OSHA will consider comments on the information collection determination submitted in either docket, but requests that commenters submit relevant comments to Docket Number OSHA–2019–0006.

Informal Public Hearing: The agency will hold an informal public hearing on Tuesday, December 3, 2019, in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. The hearing will begin at 9:30 a.m. and OSHA expects the hearing to last until 5:30 p.m., ET. A schedule will be released prior to the start of the hearings and may be amended at the discretion of the presiding administrative law judge (ALJ).

Notice of Intention to Appear at the Hearing: Interested persons who intend to present testimony or question witnesses at the hearing must submit (transmit, send, postmark, deliver) a notice of intention to appear by November 7, 2019 in Docket No. OSHA–H005C–2006–0870.

Hearing Testimony and Documentary Evidence: Interested persons who request more than 10 minutes to present testimony or intend to submit documentary evidence at the hearing must submit (transmit, send, postmark, deliver) the full text of their testimony and all documentary evidence by November 7, 2019 in Docket No. OSHA–H005C–2006–0870.

ADDRESSES: *Written Comments:* You may submit written comments, notices of intention to appear, written hearing testimony, and documentary evidence, identified by Docket No. OSHA–H005C–2006–0870 for the NPRM and Docket No. OSHA–2019–0006 for the information collection determination, by any of the following methods:

Electronically: Submit comments and attachments, as well other information, electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments. After accessing ''all documents and comments'' in the docket (OSHA–H005C–2006–0870 for the NPRM or OSHA–2019–0006 for the information collection determination), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this document, and click the ''Comment Now'' link. When uploading multiple attachments into *Regulations.gov*, please number all of your attachments because *www.Regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the rule. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. Specific instructions on uploading all documents are found in the Frequently Asked Questions portion and the Commenter's Checklist on *Regulations.gov*.

Facsimile: OSHA allows fax transmission of comments that are 10 pages or fewer in length (including attachments). Fax these documents to the OSHA Docket Office at (202) 693–1648.

Regular mail, express delivery, hand delivery, and messenger (courier) service: Submit comments and any additional material to the OSHA Docket Office, Docket No. OSHA–H005C–2006–0870 for the NPRM or Docket No. OSHA–2019–0006 for the information collection determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2350. OSHA's TTY number is (877) 889–5627. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The Docket Office will accept deliveries (express delivery, hand delivery, messenger service) during the 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 docket number for this rulemaking (Docket No. OSHA–H005C–2006–0870 for the NPRM or Docket No. OSHA–2019–0006 for the information collection determination). 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*. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others), such as Social Security Numbers, birthdates, and medical data.

Docket: To read or download comments, notices of intention to appear, and other materials submitted in response to this **Federal Register** document, go to Docket No. OSHA–H005C–2006–0870 for the NPRM or Docket No. OSHA–2019–0006 for the information collection determination at *http://www.regulations.gov* or to the OSHA Docket Office at the above address. All comments and submissions 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 that website. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. Copies also are available from the OSHA Office of Publications; telephone (202) 693–1888. This document, as well as news releases and other relevant information, is also available at OSHA's website at *http://www.osha.gov*.

Citation Method: In the docket for the beryllium rulemaking, found at *http://www.regulations.gov,* every submission was assigned a document identification (ID) number that consists of the docket number (OSHA–H005C–2006–0870) followed by an additional four-digit number. For example, the document ID number for OSHA's Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis is OSHA–H005C–2006–0870–0426. Some document ID numbers include one or more attachments (see, *e.g.,* Document ID OSHA–H005C–2006–0870–2142).

When citing exhibits in the docket, OSHA includes the term ''Document ID'' followed by the last four digits of the document ID number, the attachment number or other attachment identifier, if necessary for clarity, and page numbers (designated ''p.'' or ''Tr.'' for pages from a hearing transcript). In a citation that contains two or more document ID numbers, the document ID numbers are separated by semicolons.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General information and technical inquiries: Mr. William Perry or Ms. Maureen Ruskin, Directorate of Standards and Guidance; telephone: (202) 693–1950; email: *perry.bill@dol.gov*.

Copies of this **Federal Register** *document and news releases:* Electronic copies of these documents are available at OSHA's web page at *https://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

Table of Content

I. Background

On January 9, 2017, OSHA published the final rule *Occupational Exposure to Beryllium and Beryllium Compounds* in the **Federal Register** (82 FR 2470–2757). Subsequently, on June 27, 2017, OSHA proposed to revoke the ancillary provisions for both construction and shipyards adopted in the January 9, 2017, final rule and to retain the new lower PEL of 0.2 μg/m^3 and STEL of 2.0 μg/m^3 for those sectors (82 FR 29182).[1] OSHA discussed in the proposal its consideration of extending the compliance dates in the January 9, 2017, final rule by a year for the construction and shipyard standards. OSHA reasoned that this potential extension would give affected employers additional time to come into compliance with the final rule's requirements, which could be warranted by the uncertainty created by the proposal. OSHA also stated in the proposal that it would not enforce the construction and shipyard standards without further notice while the rulemaking was underway.[2] OSHA provided a sixty-day comment period and received over 70 unique comments in response to this proposal.

On May 7, 2018, OSHA issued a direct final rule (DFR) adopting a number of clarifying amendments to address the application of the beryllium standard for general industry to materials containing trace amounts of beryllium (83 FR 19936). The DFR amended the text of the general industry standard to clarify OSHA's intent with respect to certain terms in the standard, including the definition of beryllium work area, the definition of emergency, and the meaning of the terms dermal contact and beryllium contamination. The DFR also clarified OSHA's intent with respect to provisions for disposal and recycling and with respect to provisions that the agency intended to apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight. The DFR became effective on July 6, 2018, because OSHA did not receive significant adverse comment in response to the DFR (see 83 FR 31045 (7/3/18)).

On June 1, 2018, OSHA published a proposal to extend the compliance date for certain ancillary requirements of the general industry beryllium standard, from March 12, 2018, to December 12, 2018 (83 FR 25536). OSHA proposed an extension of the compliance date for the following provisions in the general industry standard: Beryllium work areas and regulated areas (paragraph (e)), written exposure control plans (paragraph (f)(1)), personal protective clothing and equipment (paragraph (h)), hygiene areas and practices (paragraph (i) except for change rooms and showers), housekeeping (paragraph (j)), communication of hazards (paragraph (m)), and recordkeeping (paragraph (n)). OSHA reasoned that: (1) It planned to propose modifications to ancillary provisions of the beryllium general industry standard in response to stakeholder questions and concerns; (2) it would be undesirable for both the agency and the regulated community to begin enforcement of the ancillary provisions of the standard that would be affected by the upcoming rulemaking; (3) enforcing compliance with the relevant ancillary requirements, as currently written, before publishing the agreed-upon proposal, would likely result in employers taking unnecessary measures to comply with provisions that OSHA intended to clarify; and (4) the proposed compliance date extension would give OSHA time to prepare and publish the planned substantive general industry NPRM to amend the standard before employers were required to comply with the affected provisions of the rule. At that point OSHA could rely on its de minimis policy and allow employers the option of complying with the proposed provisions of the substantive NPRM without risk of a citation. OSHA adopted the extension of the compliance dates, as proposed, on August 9, 2018 (83 FR 39351).

On December 11, 2018, OSHA published the substantive NPRM to modify several of the general industry beryllium standard's definitions, along with the provisions for methods of compliance, personal protective clothing and equipment, hygiene areas and practices, housekeeping, medical surveillance, communication of hazards, and recordkeeping (83 FR 63746). OSHA reasoned that the proposed modifications would provide clarification and simplify or improve compliance.

In a document published September 30, 2019, OSHA issued a final rule

[1] For a full discussion of the events leading to the proposed rule, see the preamble to the 2017 NPRM (82 FR at 29185–88).

[2] Subsequently, in March 2018, OSHA stated that it would begin enforcing the PEL and STEL on May 11, 2018 (see Memorandum for Regional Administrators, Delay of Enforcement of the Beryllium Standards under 29 CFR 1910.1024, 29 CFR 1915.1024, and 29 CFR 1926.1124, Mar. 2, 2018, available at: *https://www.osha.gov/laws-regs/standardinterpretations/2018-03-02*).

extending the compliance dates for the construction and shipyards ancillary provisions by one year from the publication date of the final and reaffirming the significant risk findings from the January 9, 2017, final rule (84 FR 51377). In this notice of proposed rulemaking, OSHA is considering relevant comments to the June 2017 construction and shipyards proposal, as well as general industry stakeholder input that led to the 2018 DFR and 2018 substantive NPRM, to propose revisions to the ancillary provisions of the construction and shipyard standards that are tailored to these sectors. While OSHA will consider comments on the June 2017 proposal to the extent they continue to be relevant in this rulemaking, OSHA requests that stakeholders, including those who commented on the June 2017 proposal, also comment on the proposed revisions to the ancillary provisions in this proposal.

OSHA consulted with the Advisory Committee on Construction Safety & Health (ACCSH) regarding this proposal on September 9, 2019. ACCSH recommended that OSHA proceed with the proposal to ''revise the beryllium standard for construction to ensure that the ancillary provisions are tailored to the construction industry and align with the general industry standard, where appropriate,'' and unanimously recommended that OSHA do so as soon as possible. OSHA will publish meeting minutes and copies of materials presented to the Committee in the ACCSH docket at *https://www.regulations.gov/docket?D=OSHA-2018-0012*.

II. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act of 1970 (''the OSH Act'' or ''the Act''), 29 U.S.C. 651 *et seq.,* is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate occupational safety and health standards pursuant to notice and comment rulemaking. See 29 U.S.C. 655(b). An occupational safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8).

The Act also authorizes the Secretary to ''modify'' or ''revoke'' any occupational safety or health standard, 29 U.S.C. 655(b), and under the Administrative Procedure Act, regulatory agencies generally may revise their rules if the changes are supported by a reasoned analysis, see *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). ''While the removal of a regulation may not entail the monetary expenditures and other costs of enacting a new standard, and accordingly, it may be easier for an agency to justify a deregulatory action, the direction in which an agency chooses to move does not alter the standard of judicial review established by law.'' Id. at 43.

The Act provides that in promulgating health standards dealing with toxic materials or harmful physical agents, such as the January 9, 2017, final rule regulating occupational exposure to beryllium, the Secretary must set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. 29 U.S.C. 665(b)(5). The Supreme Court has held that before the Secretary can promulgate any permanent health or safety standard, he must make a threshold finding that significant risk is present and that such risk can be eliminated or lessened by a change in practices. See *Indus. Union Dept., AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607, 641–42 (1980) (plurality opinion) (''Benzene''). OSHA need not make additional findings on risk for this proposal because OSHA previously determined that the beryllium standard addresses a significant risk, see 82 FR 2545–52, and reaffirmed that finding in the rule finalizing the 2017 shipyards and construction proposal, the final rule published September 30, 2019. See *Pub. Citizen Health Research Grp.* v. *Tyson,* 796 F.2d 1479, 1502 n.16 (D.C. Cir. 1986) (rejecting the argument that OSHA must ''find that each and every aspect of its standard eliminates a significant risk'').

OSHA standards must also be both technologically and economically feasible. See *United Steelworkers* v. *Marshall,* 647 F.2d 1189, 1248 (D.C. Cir. 1980) (''Lead I''). The Supreme Court has defined feasibility as ''capable of being done.'' *Am. Textile Mfrs. Inst.* v. *Donovan,* 452 U.S. 490, 509–10 (1981) (''Cotton Dust''). The courts have further clarified that a standard is technologically feasible if OSHA proves a reasonable possibility, ''within the limits of the best available evidence, . . . that the typical firm will be able to develop and install engineering and work practice controls that can meet the [standard] in most of its operations.'' *Lead I,* 647 F.2d at 1272. With respect to economic feasibility, the courts have held that ''a standard is feasible if it does not threaten massive dislocation to or imperil the existence of the industry.'' Id. at 1265 (internal quotation marks and citations omitted).

OSHA exercises significant discretion in carrying out its responsibilities under the Act. Indeed, a number of terms of the statute give OSHA wide discretion to devise means to achieve the congressionally mandated goal of ensuring worker safety and health. See *Lead I,* 647 F.2d at 1230. Thus, where OSHA has chosen some measures to address a significant risk over other measures, those challenging the OSHA standard must ''identify evidence that their proposals would be feasible and generate more than a de minimis benefit to worker health.'' *N. Am.'s Bldg. Trades Unions* v. *OSHA,* 878 F.3d 271, 282 (D.C. Cir. 2017).

Although OSHA is required to set standards ''on the basis of the best available evidence,'' 29 U.S.C. 655(b)(5), its determinations are ''conclusive'' if supported by ''substantial evidence in the record considered as a whole,'' 29 U.S.C. 655(f). Similarly, as the Supreme Court noted in *Benzene,* OSHA must look to ''a body of reputable scientific thought'' in making determinations, but a reviewing court must ''give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge.'' *Benzene,* 448 U.S. at 656. When there is disputed scientific evidence in the record, OSHA must review the evidence on both sides and ''reasonably resolve'' the dispute. *Tyson,* 796 F.2d at 1500. The ''possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence.'' *N. Am.'s Bldg. Trades Unions,* 878 F.3dat 291 (quoting *Cotton Dust,* 452 U.S. at 523) (alterations omitted). As the D.C. Circuit has noted, where ''OSHA has the expertise we lack and it has exercised that expertise by carefully reviewing the scientific data,'' a dispute within the scientific community is not occasion for the reviewing court to take sides about which view is correct. *Tyson,* 796 F.2d at 1500.

Finally, because section 6(b)(5) of the Act explicitly requires OSHA to set health standards that eliminate risk ''to the extent feasible,'' OSHA uses feasibility analysis rather than cost-benefit analysis to make standards-setting decisions dealing with toxic materials or harmful physical agents (29

U.S.C. 655(b)(5)). An OSHA standard in this area must be technologically and economically feasible—and also cost effective, which means that the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection—but OSHA cannot choose an alternative that provides a lower level of protection for workers' health simply because it is less costly. See *Int'l Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994); see also *Cotton Dust,* 452 U.S. at 514 n.32. In *Cotton Dust,* the Court explained that Congress itself defined the basic relationship between costs and benefits, by placing the ''benefit'' of worker health above all other considerations save those making attainment of this ''benefit'' unachievable. The court further stated that any standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in section 6(b)(5). *Cotton Dust,* 452 U.S. at 509. Thus, while OSHA estimates the costs and benefits of its proposed and final rules, partly in accordance with Executive Orders 12866 and 13771, these calculations do not form the basis for the agency's regulatory decisions.

III. Summary and Explanation of the Proposed Rule

The following discussion summarizes and explains the changes OSHA is proposing to the beryllium standards for construction and shipyards and the rationale for each proposed change.

The 2017 final rule promulgated three standards designed to protect workers from the serious health effects caused by occupational exposure to beryllium and beryllium compounds (see 82 FR 2470 (Jan. 9, 2017)). The three standards, which cover general industry (29 CFR 1910.1024), construction (29 CFR 1926.1124), and shipyards (29 CFR 1915.1024), each contains a comprehensive set of protections, consisting of the exposure limits in paragraph (c) and a number of ancillary provisions, typical of OSHA health standards, in paragraphs (d) through (n) (see 82 FR at 2476). The ancillary provisions encompass requirements for exposure assessment, competent person (construction) or regulated areas (shipyards), methods of compliance, respiratory protection, personal protective clothing and equipment, hygiene, housekeeping, medical surveillance and medical removal, communication of hazards, and recordkeeping (29 CFR 1915.1024(d)–(n); 29 CFR 1926.1124(d)–(n)).

Since the publication of the 2017 final rule, OSHA has sought to revise the beryllium standards in a number of separate rulemakings. Those bearing on this proposal include: (1) The June 27, 2017, construction and shipyards proposal (82 FR at 29182); (2) the May 7, 2018, general industry DFR (83 FR at 19936); and (3) the December 11, 2018, general industry proposal (83 FR at 63746) (see Section I, Background, above for more details). In light of the comments OSHA received on these rulemakings, and other information the agency received following the publication of the 2017 final rule, OSHA is proposing revisions to several paragraphs of the beryllium standards for construction and shipyards.

OSHA has preliminarily determined that, taken together, the limited exposures in the construction and shipyards industries and the partial overlap between the beryllium standards and other OSHA standards make revisions to both the construction and shipyards beryllium standards appropriate. The rationales for these proposed revisions fall into three categories. First, OSHA is proposing to remove or modify some provisions which—although appropriate in the general industry context—may be unnecessary or require revision to appropriately protect employees in the construction and shipyards industries. As will be explained further below, operations with beryllium exposure in the construction and shipyards industries are significantly less varied and employees are exposed to materials with significantly lower content beryllium than in the general industry sector. In addition, employees in these industries receive the protections of several other OSHA standards, as the agency explained both in the June 27, 2017, construction and shipyards proposal and in the final rule published September 30, 2019.

Second, OSHA is proposing to revise some provisions of the construction and shipyard standards to avoid inconsistencies with the clarifying changes the agency proposed in the December 11, 2018, general industry proposal. OSHA seeks to align these standards to the extent possible because the agency believes that, where there is no substantive difference among industries with respect to a particular provision, applying similar requirements across industries aids both compliance and enforcement.

Conversely, applying different requirements to identical situations may lead to confusion. While most of the proposed changes in the December 2018 proposed rule were designed specifically for general industry, OSHA is proposing to align changes to paragraph (b), medical definitions; paragraph (k), medical surveillance; and paragraph (n), recordkeeping for workers' Social Security Numbers (SSNs) (83 FR at 63746), because the rationale underlying these proposed changes applies equally in the construction and shipyards contexts.

Third, OSHA is proposing to revise certain paragraphs of the construction and shipyard standards to address the application of provisions related to dermal contact to materials containing beryllium in trace quantities. In the general industry DFR, OSHA clarified that provisions triggered by dermal contact with beryllium or beryllium contamination would apply only for dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight (83 FR at 19939).

OSHA's rationale regarding this final set of proposed changes dates back to the agency's August 7, 2015, beryllium NPRM (which led to the 2017 final rule) (80 FR at 47565). Therein, OSHA proposed to exempt materials containing less than 0.1% beryllium by weight on the premise that workers exposed only to beryllium as a trace contaminant are not exposed at levels of concern (80 FR at 47775). However, the agency noted evidence of high airborne exposures in construction and shipyard sectors, in particular during blasting operations and cleanup of spent media (80 FR at 47733). Therefore, OSHA proposed for comment several regulatory alternatives, including an alternative that would expand the scope of the proposed standard to also include all operations in general industry where beryllium exists only as a trace contaminant (80 FR at 47730) and an alternative that would expand the scope to include employers in the shipyard and maritime sectors (80 FR at 47777).

In the 2017 final rule, after considering stakeholders' comments, OSHA decided to apply the exemption for materials containing less than 0.1% beryllium by weight only where the employer has objective data demonstrating that employee exposure to airborne beryllium will remain below the action level of 0.1 $\mu g/m^3$, measured as an 8-hour TWA, under any foreseeable conditions (82 FR at 2643). OSHA noted that the action level exception ensured that workers with airborne exposures of concern were covered by the standard. OSHA agreed with the many commenters and hearing testimony expressing concern that hazardous exposures to beryllium can occur with materials containing trace

amounts of beryllium. While the agency acknowledged concerns expressed by ABMA and EEI that processing materials with trace amounts of beryllium may not necessarily produce significant exposures to beryllium, evidence in the record showed significant exposures in some operations using materials with trace amounts of beryllium. OSHA explicitly identified abrasive blasting as one such operation. The agency determined that preventing airborne exposures at or above the action level, even to trace amounts of beryllium, reduces the risk of beryllium-related health effects to workers (82 FR at 2643; *see also* 82 FR at 2552).

While adopting this limited exemption for trace materials, OSHA also adopted the regulatory alternative expanding the scope of the rule to include both construction and shipyards, but recognized that these sectors had limited operations that generated airborne exposures to beryllium of concern and issued separate standards for these sectors.

Nonetheless, OSHA applied similar ancillary requirements across the general industry, construction, and shipyards beryllium standards. At the same time, the agency acknowledged that different approaches may be warranted for some provisions in construction and shipyards than for general industry due to the nature of the materials and work processes typically used in those industries (82 FR at 2690). Specifically, exposures to beryllium in construction and shipyards are limited to only a few operations, primarily abrasive blasting in construction and shipyards and some welding operations in shipyards (see Document ID 2042, FEA Chapter III, pp. 103–11 and Table III–8e). While the extremely high airborne exposures during the blasting operation can expose workers to beryllium in excess of the PEL, the blasting materials contain only trace amounts of beryllium (materials such as coal slag normally contain approximately 11µg/g or 0.0001 percent) (Document ID 2042, Chapter IV, Technological Feasibility, Table IV.69).

Furthermore, the rulemaking record contains evidence of beryllium exposure during only limited welding operations in shipyards (only 4 of 127 sample results showed detectable levels of airborne beryllium) (Document ID 2042, Chapter IV, Technological Feasibility, p. IV–580).

As the regulatory history above suggests, OSHA intended to protect employees working with trace beryllium when those employees experience significant airborne exposures. OSHA did not intend for provisions aimed at protecting workers from the effects of dermal contact to apply in the case of materials containing only trace amounts of beryllium in the absence of significant airborne beryllium exposure. For this reason, OSHA clarified in the general industry DFR that provisions triggered by dermal contact with beryllium or beryllium contamination would apply only for dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight (83 FR at 19939). In construction and shipyards, where beryllium exposure occurs almost exclusively from materials that contain beryllium in concentrations less than or equal to 0.1 percent by weight, OSHA is now proposing to remove provisions triggered by dermal contact or beryllium contamination entirely.

Additionally, although limited welding operations in shipyards may include base materials or fume containing more than 0.1 percent beryllium by weight, OSHA has reason to believe that skin or surface contamination is not an exposure source of concern in these operations. A 2007 study by Cole indicated that the beryllium content of beryllium-aluminum alloy welding fume samples was lower than expected given the beryllium content of the base metal (see Document ID 0885, p. 685).[3] OSHA therefore believes the amount of beryllium oxide to form on the surface of materials being welded in shipyards is likely far lower than would be expected based solely on the percentage of beryllium in the base metal. OSHA therefore expects that skin or surface contamination from beryllium dust, fumes, mists, or solutions in concentrations of 0.1 percent by weight or more is unlikely to result from the welding operations for beryllium/aluminum alloys sometimes found in shipyards. While OSHA is proceeding on this assumption for purposes of this proposal, the agency specifically requests comments and data on the potential for skin and surface contamination from materials containing more than 0.1 percent beryllium by weight in shipyard welding operations.

Based on the foregoing, OSHA is proposing a number of revisions to the beryllium standards for construction and shipyards. These revisions apply to the following: Paragraph (b), definitions; paragraph (f), methods of compliance; paragraph (g), respiratory protection; paragraph (h), personal protective equipment (PPE); paragraph (i), hygiene areas and practices; paragraph (j), housekeeping; paragraph (k), medical surveillance; paragraph (m), communication of hazards; and paragraph (n), recordkeeping. The remainder of this summary and explanation provides detail on these proposed changes, including the agency's reasoning for each.

Paragraph (b) Definitions

Paragraph (b) of the beryllium standards for both construction and shipyards provides definitions of terms used in the beryllium regulatory text. OSHA is proposing to modify several existing definitions: *CBD diagnostic center, chronic beryllium disease (CBD),* and *confirmed positive*; to add a definition of *beryllium sensitization*; and to eliminate the definition of *emergency*. All proposed changes to paragraph (b) would apply to both the construction and shipyards standards.

OSHA is proposing to modify the definitions of *CBD diagnostic center, chronic beryllium disease (CBD),* and *confirmed positive* and add a definition of *beryllium sensitization* to align with changes the agency has proposed to the beryllium standard for general industry. OSHA proposed these modifications for the general industry standard in December 2018 to clarify the meaning of the terms used in that standard (83 FR at 63747). OSHA provided a sixty-day comment period for the general industry proposal, which closed on Feb. 11, 2019. OSHA's rationale for including these definitions applies equally in the construction and shipyards contexts. Accordingly, OSHA will consider the comments that were submitted in response to the proposed changes to definitions in the general industry standard along with any comments received during this rulemaking on the proposed definitions in determining whether to finalize the proposed definitions in the construction and shipyards standards. The comments to the general industry proposal can be found in Docket OSHA–2018–0003 at *http://regulations.gov*.

Beryllium sensitization. OSHA is proposing to add a definition for *beryllium sensitization* that encompasses the following concepts:

[3] The alloy examined by Cole et al. contained .0007 percent beryllium. As the study explained, ''[b]ecause of its higher reactivity, beryllium should readily oxidize and be present in the weld fume. However, all results from this filler alloy showed beryllium emissions of <0.2 µg/m^3 even though the concentration of particulate matter exceeded 600 mg/m^3.'' Applying the 0.0007 percent beryllium content of the alloy to the 600 mg/m^3 of the particulate generated yields an expected 4.2 µg/m^3 of beryllium in the welding fume, about thirty times the observed quantity of less than 0.2 µg/m^3. (Document ID 0855, pp. 684–85).

That beryllium sensitization is a response in the immune system of a specific individual who has been exposed to beryllium; that there are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium; and finally that while not every beryllium-sensitized person will develop CBD, beryllium sensitization is essential for development of CBD. The agency is proposing to add this definition in order to provide additional clarification of other provisions in the standard, such as the definitions of *chronic beryllium disease* (CBD) and *confirmed positive* and the provisions for medical surveillance (paragraph (k)) and hazard communication (paragraph (m)). This proposed revision is identical to the change proposed in the December 2018 general industry proposal and serves the same purpose (see 83 FR at 63747). The proposed addition of a definition for *beryllium sensitization* would not change employer obligations under paragraphs (k) and (m) and would not affect employee protections.

As OSHA determined in the 2017 final rule, after an individual has been sensitized, subsequent beryllium exposures via inhalation can progress to serious lung disease through the formation of granulomas and fibrosis (82 FR at 2491–98). Since the pathogenesis of CBD involves a beryllium-specific, cell-mediated immune response, CBD cannot occur in the absence of sensitization (NAS, 2008, Document ID 1355). Therefore, the proposed definition explaining that beryllium sensitization is essential for development of CBD is consistent with the agency's findings in the final rule.

In response to the December 2018 general industry proposal, several commenters expressed support for OSHA's inclusion of a definition of beryllium sensitization in the beryllium general industry standard, including National Jewish Health (NJH) (Document ID OSHA–2018–0003–0022, p. 2), the United Steelworkers (USW) (Document ID OSHA–2018–0003–0033, p. 1), Materion (Document ID OSHA–2018–0003–0038, p.8), the US Department of Defense (DoD) (Document ID OSHA–2018–0003–0029, p.1), and Edison Electric Institute (EEI) (Document ID OSHA–2018–0003–0031, p. 2). Two commenters agreed with OSHA's proposed definition with no changes (Document ID OSHA–2018–0003–0033, p. 1; 0038, p. 2).

While OSHA received no objections to including a definition of beryllium sensitization in the beryllium standard for general industry, The National Supplemental Screening Program (NSSP), a U.S. Department of Energy Former Worker Medical Screening Program and NJH recommended alternative text for the definitions (Document ID OSHA–2018–0003–0027 p. 1; 0022, p. 2; see also Document ID 0364, pp. 1, 44). Other commenters had concerns about specific statements in the definition (Document ID OSHA–2018–0003–0033, p. 1; 0027, p.1). As stated above, OSHA will consider these comments along with any comments submitted during this rulemaking in determining whether to finalize the proposed definition in the construction and shipyards standards.

CBD diagnostic center. OSHA is proposing to amend the definition of *CBD diagnostic center* to clarify certain requirements used to qualify an existing medical facility as a CBD diagnostic center. The proposed clarification would not change the employer requirement to offer a follow-up examination at a CBD diagnostic center to employees meeting the criteria set forth in paragraph (k)(2)(ii). OSHA is proposing *CBD diagnostic center* to mean a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of CBD. The proposed definition also states that a CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. In the proposed definition, the CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours and the pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

As discussed in the December 2018 general industry proposal (83 FR at 63747), the proposed definition includes the following changes to the current definition of *CBD diagnostic center*. First, the agency is proposing changing the language to reflect the agency's intent that pulmonologists or pulmonary specialists be on staff at a CBD diagnostic center. Whereas the current definition specifies only that a CBD diagnostic center must have a pulmonary specialist, OSHA is proposing to add the term ''pulmonologist'' to clarify that either type of specialist is qualified to perform a clinical evaluation for the presence of CBD. Additionally, the current definition states that a CBD diagnostic center has an on-site specialist. OSHA is proposing to change the language to state that a CBD diagnostic center must have a pulmonologist or pulmonary specialist on staff, rather than on site, to clarify that such specialists need not necessarily be on site at all times.

An additional proposed change to *CBD diagnostic center* would clarify that the diagnostic center must have the capacity to do any of the listed tests that the examining physician may deem necessary. As currently written, the definition could be misinterpreted to mean that any clinical evaluation for CBD performed at a CBD diagnostic center must include pulmonary testing, bronchoalveolar lavage, and transbronchial biopsy. The agency's intent is not to dictate what tests a specialist should include, but to ensure that any facility has the capacity to perform any of these tests, which are commonly needed to diagnose CBD. Therefore, the agency is proposing to modify part of the current definition from ''[t]his evaluation must include pulmonary function testing . . .'' to ''[t]he CBD diagnostic center must have the capacity to perform pulmonary function testing. . . .'' These changes to the definition of *CBD diagnostic center* are clarifying in nature, and OSHA expects they would maintain safety and health protections for workers.

OSHA received comments on this definition during the December 2018 general industry rulemaking. Materion submitted comments supporting OSHA's intent to specify the required capacities of a CBD diagnostic center, rather than the contents of a CBD evaluation, in the definition of *CBD diagnostic center* (Document ID OSHA–2018–0003–0038, pp. 16–17). NJH expressed concern that this change to the definition may indicate that the clinical evaluation for CBD need not include certain aspects of a CBD evaluation, which NJH, the Association of Occupational and Environmental Clinics (AOEC), and the ATS recommend should typically include full pulmonary function testing (lung volumes, spirometry, and diffusion capacity for carbon monoxide), chest imaging, and cardiopulmonary exercise testing, and may also include bronchoscopy in some cases (Document IDs OSHA–2018–0003–0022, p. 3; 0028, p. 2; 0021, pp. 1–2). OSHA will consider these comments, along with any comments submitted during this rulemaking, in developing the final beryllium standards for construction and shipyards.

Chronic beryllium disease (CBD). For the purposes of this standard, the agency is proposing *chronic beryllium*

disease to mean a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium-sensitized. The proposed definition includes several changes to the current definition of *chronic beryllium disease*.

First, OSHA proposes to add the term ''granulomatous'' to the phrase ''lung disease'' to better distinguish CBD from other occupationally associated chronic pulmonary diseases of inflammatory origin. A granulomatous lung formation is a focal collection of inflammatory cells (*e.g.,* T-cells) creating a nodule in the lung (Ohshimo et al., 2017, Document ID OSHA–H005C–2006–0870–2171, p. 2). The formation of the type of lung granuloma specific to a beryllium immune response can only occur in those with CBD (82 FR at 2492–2502).

An additional proposed clarification to the definition of *chronic beryllium disease* would change ''associated with airborne exposure to beryllium'' to ''caused by inhalation of airborne beryllium.'' This proposed change would be more consistent with the findings in the 2017 final rule that indicate beryllium is the causative agent for CBD and that CBD only occurs after inhalation of beryllium (82 FR at 2513). A further proposed change includes the addition of ''by an individual who is beryllium sensitized.'' This proposed change would clarify OSHA's finding that beryllium sensitization is essential in the development of CBD (82 FR at 2492).

In response to the December 2018 general industry proposal, NJH, USW, and Materion agreed with OSHA that the 2017 final standard's definition of *chronic beryllium disease* should be clarified (Document ID OSHA–2018–0003–0022, p. 2; 0033, p. 5; 0038, p. 17). However, some commenters expressed concern that the proposed definition of *chronic beryllium disease* does not provide sufficient information to guide diagnosis of CBD, and specifically that OSHA's emphasis on the role of sensitization in the development of CBD may confuse diagnostic efforts (Document ID OSHA–2018–0003–0021, pp. 4–5; 0023, p. 2). Other commenters suggested alternative language for the definition of CBD (OSHA–2018–0003–0027, pp. 3–4; 0022, p. 2). OSHA will consider these comments, along with any comments submitted during this rulemaking, in developing the final beryllium standards for construction and shipyards.

Confirmed positive. OSHA is proposing to modify the definition of *confirmed positive* to mean that an employee has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results obtained within the 30 day follow-up test period required after a first abnormal or borderline BeLPT test result. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization. The proposed definition includes several changes to the current definition of *confirmed positive*.

First, OSHA is proposing to remove the phrase ''beryllium sensitization'' from the first part of the definition, which currently states that the person tested has beryllium sensitization, as indicated by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results. The proposed change would emphasize OSHA's intent that *confirmed positive* should act as a trigger for continued medical monitoring and surveillance for the purposes of this standard and is not intended as a scientific or general-purpose definition of beryllium sensitization.

The term *confirmed positive* originates from a study that described the findings from a large-scale interlaboratory testing scheme (Stange et al., 2004; Document ID 1402). Stange et al. demonstrated that when samples with abnormal findings from one lab were retested in a second lab, the reliability of the results increased. As OSHA discussed in the preamble to the 2017 final rule, individuals who are confirmed positive through two abnormal BeLPT test results, an abnormal and a borderline, or three borderlines may be at risk for developing CBD (82 FR at 2646). OSHA intends the term *confirmed positive* in the beryllium standards to identify those individuals who may be at risk for developing CBD and should therefore be offered continued medical surveillance, an evaluation at a CBD diagnostic center, and medical removal protection, regardless of whether they might otherwise be identified as ''sensitized.''

The next proposed change to *confirmed positive* would include clarification that the findings of two abnormal, one abnormal and one borderline, or three borderline results need to occur within the 30-day follow-up test period required after a first abnormal or borderline BeLPT test result. After publication of the 2017 final rule, stakeholders suggested to OSHA that the definition of *confirmed positive* could be interpreted as meaning that findings of two abnormal, one abnormal and one borderline, or three borderline results over any time period, even as long as 10 years, would result in the employee being confirmed positive. This was not the agency's intent. Such a timeframe may lead to false positives and thereby not enhance employee protections. Therefore, OSHA is proposing a clarification that any combination of test results specified in the definition must result from the tests conducted in one 30-day cycle of testing, including the initial test and the retesting offered when an initial result is a single abnormal result or borderline, in order to be considered confirmed positive.

As outlined in paragraph (k)(3)(ii)(E), an employee must be offered a follow-up BeLPT within 30 days if the initial test result is anything other than normal, unless the employee has been confirmed positive (*e.g.,* if the initial BeLPT was performed on a split sample and showed two abnormal results). Thus, for example, if an employee's initial test result is abnormal, and the result of the follow-up testing offered to confirm the initial test result is abnormal or borderline, the employee would be confirmed positive. But if the result of the follow-up testing offered to confirm the initial abnormal test result is normal, the employee would not be confirmed positive. The initial abnormal result and a single abnormal or borderline result obtained from the next required BeLPT for that employee (typically, two years later) would not identify that employee as confirmed positive under the proposed definition of that term. OSHA requests comments on the appropriateness of this proposed time period for obtaining BeLPT test samples that could be used to determine whether an employee is confirmed positive.

Some commenters on the December 2018 general industry NPRM agreed with OSHA's proposed definition of *confirmed positive* (OSHA–2018–0003–0033, p. 5; 0038, p. 17–19), while other commenters expressed concerns over several aspects of the definition. OSHA received comments on the removal of the term ''beryllium sensitized'' from the definition (Document ID OSHA–2018–000–0022; p. 4; 0021, p. 3; 0028, p. 2; 0027, p. 3). OSHA also received several comments regarding OSHA's proposal to require that the test results specified in the agency's definition of confirmed positive must occur within a single testing cycle. These comments focused on several aspects of the proposed timing. First, many of the comments focused on the logistics of OSHA's proposed change (Document ID 0038, p. 17; 0022, p. 4; 0021, p. 4; 0024, p.1; 0033, p. 5; 0027, p. 3). Secondly, stakeholders commented on the

appropriateness of limiting the use of the BeLPT from one test cycle in determining if a worker is confirmed positive (Document ID OSHA 2018–0003–0022, p. 4; 0021, p. 4; 0023, p. 2; 0027, pp 2–3; and 0024, p. 1). OSHA will consider these comments, along with any comments submitted during this rulemaking, in developing the final beryllium standards for construction and shipyards.

Finally, OSHA is proposing to remove the term *emergency* from paragraph (b) of the standards for construction and shipyards. As discussed later in this section, unlike general industry, OSHA has preliminarily determined that the construction and shipyards industries—where beryllium occurs primarily in trace quantities and exposure occurs during abrasive blasting and welding operations—do not have emergencies in which exposures to beryllium will differ from the normal conditions of work. Therefore, OSHA has preliminarily determined that no requirements should be triggered for emergencies in construction and shipyards. Accordingly, OSHA is proposing to remove references to emergencies in provisions such as medical surveillance and hazard communication (see the summary and explanation of paragraphs (k) and (m)). Because OSHA is proposing to remove the term emergency from the standard, the definition is no longer needed. OSHA welcomes comment on the proposed removal of the definition of *emergency* from the beryllium standards for construction and shipyards.

Paragraph (f) Methods of compliance

Paragraph (f) of the beryllium standards for construction and shipyards, like the corresponding general industry provision (29 CFR 1910.1024(f)), requires that employers implement methods for reducing employee exposure to beryllium through a detailed written exposure control plan, engineering and work practice controls, and a prohibition on rotating employees to achieve compliance with the PEL. In the 2017 final rule, OSHA determined that written plans would ''be instrumental in ensuring that employers comprehensively and consistently protect their employees'' (82 FR at 2668). OSHA also concluded that requiring reliance on engineering and work practice controls is consistent with good industrial hygiene practice and with OSHA's traditional approach for health standards (82 FR at 2672).

While extending these provisions to the construction and shipyards industry in the 2017 final rule, OSHA acknowledged that exposures to beryllium in these industries are limited to only a few operations; abrasive blasting in construction and shipyards and some welding operations in shipyards. With respect to abrasive blasting, while the extremely high airborne exposures during the blasting operation can expose workers to beryllium in excess of the PEL, the blasting materials contain only trace amounts of beryllium (materials such as coal slag normally contain approximately 11µg/g or 0.0001%) (Document ID 2042, Chapter IV, Technological Feasibility, Table IV.69). Moreover, OSHA had evidence of beryllium exposure during only limited welding operations in shipyards (only 4 of 127 sample results showed detectable levels of airborne beryllium) (Document ID 2042, Chapter IV, Technological Feasibility, p. IV–580). Nonetheless, OSHA applied the same requirements to these industries as to general industry, where the operations with beryllium exposure are significantly more varied and employees are exposed to materials with significantly higher beryllium content.

OSHA is proposing to revise the requirements in paragraph (f) in light of the very narrow set of affected operations and the limited extent of beryllium exposure in the construction and shipyards industries. OSHA believes that some provisions in paragraph (f)—although appropriate in the general industry context—may be unnecessary to protect employees in the construction and shipyards industries. Likewise, as discussed in the introduction of the summary and explanation section, OSHA has preliminarily determined that provisions relating solely to dermal contact with beryllium should not apply in the construction and shipyards industries, where exposures involve materials containing or producing only trace amounts of beryllium (see the summary and explanation for paragraph (h), Personal Protective Clothing and Equipment). Accordingly, OSHA is proposing several revisions to both paragraph (f)(1) (Written exposure control plan) and (f)(2) (Engineering and work practice controls) in the construction and shipyards standards.

Paragraph (f)(1) Written Exposure Control Plan

Paragraph (f)(1) in both the construction and shipyards standards requires employers to establish, implement, and maintain a written exposure control plan containing the following: (1) A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium (paragraph (f)(1)(i)(A)); (2) A list of operations and job titles reasonably expected to involve airborne exposure at or above the action level (paragraph (f)(1)(i)(B)); (3) A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL (paragraph (f)(1)(i)(C)); (4) Procedures for minimizing cross-contamination (paragraph (f)(1)(i)(D)); (5) Procedures for minimizing the migration of beryllium within or to locations outside the workplace (paragraph (f)(1)(i)(E)); (6) A list of engineering controls, work practices, and respiratory protection required by paragraph (f)(2) of the standard (paragraph (f)(1)(i)(F)); (7) A list of personal protective clothing and equipment required by paragraph (h) of the standard (paragraph (f)(1)(i)(G)); and (8) Procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators (paragraph (f)(1)(i)(H)). Written exposure control plans in construction additionally must contain procedures used to restrict access to work areas when airborne exposures are, or can reasonably be expected to be, above the TWA PEL or STEL, to minimize the number of employees exposed to airborne beryllium and their level of exposure, including exposures generated by other employers or sole proprietors (paragraph (f)(1)(i)(I)).

OSHA is proposing several revisions to paragraph (f)(1). First, OSHA proposes to revise paragraph (f)(1)(i)(A) by removing the words ''airborne'' and ''or dermal contact with'' as qualifiers for exposure to beryllium. As revised, the provision would require simply a list of operations and job titles reasonably expected to involve exposure to beryllium, which would include abrasive blasting and welding operations where exposures at or above the action level are reasonably foreseeable based on objective data, in accordance with paragraph (a)(3), Scope. At the same time, OSHA is proposing to revoke paragraphs (f)(1)(i)(B) and (C), which require additional lists of operations and job titles involving exposure above the action level and above the TWA PEL or STEL, respectively. Given the small number of operations with beryllium exposure in these industries, the operations and job titles in these categories would be largely the same as those for which exposure to beryllium is reasonably expected. OSHA therefore believes that it is sufficient that an

employer identify those operations and job titles that result in exposure to beryllium in any form and that fall within the scope of the standards, and that any additional lists would be unnecessary and redundant.

OSHA is also proposing to revoke the requirements that the written exposure control plan must include procedures for minimizing cross-contamination (paragraph (f)(1)(i)(D)) and procedures for minimizing the migration of beryllium within or to locations outside the workplace (paragraph (f)(1)(i)(E)). The purpose of these requirements was to ensure that workers not involved in beryllium-related operations would not be unintentionally exposed to beryllium in excess of the PELs. Instead, for the construction standard, OSHA is retaining the requirement for the written plan to include procedures to restrict access to work areas where exposures to beryllium could reasonably be expected to exceed the TWA PEL or STEL (renumbered as paragraph (f)(1)(i)(D)), and the requirement that these procedures are to be implemented by a competent person (paragraph (e)(2)). For the shipyard standard, OSHA is retaining requirements for regulated areas (paragraph (e)), which require that employers designate areas where exposures to beryllium could exceed the PELs and limit access to authorized employees. In addition, OSHA is also proposing to add a new paragraph in both the construction ((f)(1)(i)(E)) and shipyards ((f)(1)(i)(D)) standards to require that the written exposure control plan include procedures used to ensure the integrity of each containment (such as tarps or structures used to keep sandblasting debris within an enclosed area) used to minimize exposures to employees outside the containment. The purpose of this proposed revision is to ensure that any containment used is not compromised such that employees outside of the containment are potentially exposed to beryllium at levels above the TWA PEL or STEL. OSHA believes that these requirements will adequately ensure that workers not directly involved in beryllium-related work are not exposed to beryllium in excess of the TWA PEL or STEL.

OSHA is further proposing to remove the requirement for written plans to contain procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators (paragraph (f)(1)(i)(H)). As discussed below, OSHA is proposing to remove requirements in paragraph (h)(2) of the construction and shipyard standards that relate to removing, storing, maintaining, cleaning, and disposing of PPE (see the summary and explanation for paragraph (h), Personal Protective Clothing and Equipment); therefore, OSHA believes that it is not necessary to include such procedures in the written plan.

Paragraph (f) retains the requirements that the written exposure control plan include a list of engineering controls, work practices, and respiratory protection required by paragraph (f)(2) and a list of personal protective clothing and equipment required by paragraph (h), renumbered as paragraphs (f)(1)(i)(B) and (C), respectively. Likewise, the standards retain paragraphs (f)(1)(ii) and (iii), which provide the requirements for maintaining, reviewing, and evaluating the written exposure control plan and providing access to the plan to each employee who can reasonably be exposed to airborne beryllium. OSHA is proposing only one change in these requirements, to revise paragraph (f)(1)(ii)(B) to refer simply to ''exposure'' rather than ''airborne exposure to or dermal contact with.'' This change is consistent with other paragraphs where OSHA is proposing to simplify the language in a similar manner (*e.g.,* paragraph (f)(1)(i)(A), Written exposure control plan; paragraphs (k)(3)(ii)(A) and (k)(4)(i), Medical surveillance).

Paragraph (f)(2) Engineering and Work Practice Controls

Paragraph (f)(2) of the construction and shipyards standards lists the requirements for the use of engineering and work practice controls to reduce and maintain employee airborne exposure below the TWA PEL and STEL. Paragraph (f)(2)(i) requires that, where exposures are, or can reasonably be expected to be, at or above the action level, the employer must ensure that at least one of the following is in place to reduce airborne exposure: (1) Material and/or process substitution (paragraph (f)(2)(i)(A)); (2) isolation, such as ventilated partial or full enclosures (paragraph (f)(2)(i)(B)); (3) local exhaust ventilation, such as at the points of operation, material handling, and transfer (paragraph (f)(2)(i)(C)); or (4) process control, such as wet methods and automation (paragraph (f)(2)(i)(D)). Paragraph (f)(2)(ii) exempts an employer from this requirement to the extent that the employer can establish that the controls are infeasible or that airborne exposure is below the action level, using no fewer than two representative personal breathing zone samples taken at least 7 days apart, for each affected operation.

If, after implementing the controls required by paragraph (f)(2)(i), airborne exposures still exceed the TWA PEL or STEL, paragraph (f)(2)(iii) requires the employer to implement additional or enhanced engineering and work practice controls to reduce exposure below these limits. Finally, if the employer demonstrates that it is not feasible to reduce exposures below the TWA PEL and STEL through engineering and work practice controls, paragraph (f)(2)(iv) requires the employer to implement controls to reduce exposure to the extent feasible and supplement the controls through the use of respirators in accordance with paragraph (g) of the standard.

In this rulemaking, OSHA is proposing to remove the requirement to implement the controls currently listed in paragraph (f)(2)(i) where exposures are or can reasonably be expected to meet or exceed the action level. This requirement in the construction and shipyard standards was derived from the general industry standard, which requires that employers establish beryllium work areas where operations could release airborne beryllium and that employers implement at least one type of engineering control where exposures could reasonably be expected to exceed the action level within the work area. In reconsidering this requirement, OSHA believes that requiring implementation of engineering controls where exposures exceed the action level may not be reasonably appropriate for construction and shipyard operations. In the 2017 final rule, OSHA acknowledged that this approach to engineering and work practice controls was ''not typical for OSHA standards'' in that OSHA health standards usually require such controls to be implemented where exposures exceed the PEL (82 FR at 2673). Furthermore, OSHA's analysis of the technological feasibility of the PELs concluded that workers performing open-air blasting with mineral grit would ''routinely'' experience exposures in excess of the PEL even after implementing engineering controls, thus triggering requirements for respirator use (82 FR at 2584). Therefore, OSHA is proposing to rescind the requirement to trigger use of engineering and work practice controls by the action level.

Paragraph (f)(2) continues to require employers to implement engineering or work practice controls if needed to reduce airborne exposures to or below the TWA PEL of 0.2 μg/m^3 and STEL of 2.0 μg/m^3 unless the employer can demonstrate that such controls are not feasible. Where it is not feasible to

implement engineering and work practice controls to comply with the exposure limits, paragraph (f)(2) requires the employer to implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls by using respiratory protection in accordance with paragraph (g) of the proposed standard. These are the same requirements currently found in paragraphs (f)(2)(iii) and (iv) of the standards. Accordingly, OSHA is proposing to condense the portions of paragraphs (f)(2)(i)–(iv) that it proposes to retain into a single paragraph (f)(2), which would not have any subparagraphs or items.

The requirement to implement engineering and work practice controls is consistent with several other standards in both construction and shipyards that require the use of engineering controls to minimize toxic dust. For example, the ventilation standard in construction (29 CFR 1926.57(f)(2)(ii)) requires ''[t]he concentration of respirable dust or fume in the breathing zone of the abrasive-blasting operator or any other worker'' to remain ''below the levels specified in § 1926.55.'' Similarly, the use of ventilation in shipyards is required under other OSHA standards such as the Ventilation standard for abrasive blasting (29 CFR 1910.94(a)), which also applies to abrasive blasting in shipyards.

The reliance of proposed paragraph (f)(2) on the hierarchy of controls likewise reflects OSHA's approach in other standards covering welding in shipyards. For example, 29 CFR 1915.51 requires that ventilation be used to keep welding fumes and smoke within safe limits, and 29 CFR 1915.51(d)(2)(iv) specifically covers welding involving beryllium, and states that ''[b]ecause of its high toxicity, work involving beryllium shall be done with both local exhaust ventilation and air line respirators.''

In response to the 2017 proposal to rescind the ancillary provisions of the construction and shipyard standards, OSHA received comments from AFL–CIO on the importance of maintaining the hierarchy of controls and that primary reliance on PPE absent a specific requirement would not address bystander exposure to beryllium (Document ID 2140, p. 8). AFL–CIO also pointed out that the National Institute for Occupational Safety and Health (NIOSH) stresses the importance of reducing exposures to carcinogens first through engineering controls (including elimination and substitution) and work practices prior to the use of respirators in a recently updated chemical carcinogen policy (Document ID 2140, p. 8). OSHA agrees with AFL–CIO that it is important that the hierarchy of controls be followed to ensure that exposures are minimized, not only to abrasive blasting operators and welders, but also to bystanders or other workers nearby. Therefore, to ensure that employers apply the hierarchy principle to reduce exposures to or below the PELs for beryllium, and to ensure that all potentially affected workers are appropriately so protected, OSHA is proposing to retain a specific requirement for construction and shipyard employers to implement engineering and work practice controls to achieve compliance with the PEL and STEL, as OSHA has required in all of its other health standards.

OSHA notes this proposal retains, without revision, paragraph (f)(3) of both the construction and shipyards standards, which prohibits employers from rotating employees to different jobs in order to achieve compliance with the PELs. OSHA continues to believe, as it found in the 2017 final rule, that it is important to prohibit this practice to ensure that employers do not expose more people than necessary to the hazards of beryllium solely to achieve the PEL instead of using engineering controls or work practices to reduce exposures (82 FR at 2675).

Paragraph (g) Respiratory Protection

Paragraph (g) in the beryllium standards for both construction and shipyards, like the corresponding general industry standard, requires the provision and use of respiratory protection from exposures to beryllium under specific conditions. Paragraph (g) also provides that required respiratory protection must be selected and used in accordance with OSHA's general Respiratory Protection standard at 29 CFR 1910.134. Finally, paragraph (g) requires employers to provide a powered air-purifying respirator (PAPR) when an employee entitled to a respirator under the beryllium standard requests one, as long as the PAPR provides adequate protection.

Paragraph (g)(1) requires employers to provide respiratory protection at no cost to employees and ensure that employees utilize such protection in five circumstances: (i) During periods necessary to install or implement feasible engineering and work practice controls where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL (paragraph (g)(1)(i)); (ii) during operations, including maintenance and repair activities and non-routine tasks, when engineering and work practice controls are not feasible and airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL (paragraph (g)(1)(ii)); (iii) during operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL (paragraph (g)(1)(iii)); (iv) during emergencies (paragraph (g)(1)(iv)); and (v) when an employee who is eligible for medical removal under the standard chooses to remain in a job with airborne exposure at or above the action level (paragraph (g)(1)(v)).

In this rulemaking, OSHA is proposing to remove paragraph (g)(1)(iv), which requires the use of respiratory protection during emergencies.[4] OSHA has preliminarily determined that this amendment is justified because other respiratory protection requirements make it likely that construction and shipyard workers will be using respiratory protection during normal tasks or activities (*i.e.,* prior to any emergency), and thus provide adequate protections in the absence of the paragraph addressing respiratory protection in emergency situations.

An emergency is currently defined in paragraph (b) of both the construction and shipyards standards as ''any uncontrolled release of airborne beryllium.'' As explained above in the summary and explanation of paragraph (b), OSHA is proposing to remove this definition entirely from the construction and shipyards standards because the agency expects that, in these industries, an uncontrolled release of airborne beryllium (such as a release resulting from a failure of the blasting control equipment or a spill of the abrasive blasting media) would occur only during the performance of routine tasks already associated with the airborne release of beryllium—*i.e.,* during abrasive blasting or welding processes. During these processes, OSHA anticipates that employees working in the immediate vicinity of an uncontrolled release of airborne beryllium would already be using respiratory protection required by paragraph (g) of the standards (because, for example, controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL (paragraph (g)(1)(iii))).

Although OSHA is not proposing to remove any of the other respiratory

[4] As a result, OSHA is also proposing to renumber paragraph (g)(1)(v) as (g)(1)(iv) in both standards.

protection requirements in paragraph (g), the agency recognizes that other provisions in the beryllium standards and in other OSHA standards may address respiratory protection in the construction and shipyards sectors. For example, current paragraph (j)(2)(iv) in the beryllium standards for construction and shipyards, renumbered as paragraph (j)(1)(iii) in this proposal, requires respirators where employees use dry sweeping, brushing, or compressed air to clean. Other potentially applicable standards in construction include the Ventilation standard (29 CFR 1926.57(f)(5)), the Personal Protective and Life Saving Equipment standard (29 CFR 1926.95), and the general Respiratory Protection standards (29 CFR 1910.134, 1926.103). In shipyards, other standards addressing respiratory protection include the Mechanical Paint Removers standard (29 CFR 1915.34(c)(3)), the Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment standards (29 CFR 1915.12(c)(4)(ii)), the Welding, Cutting, and Heating standards for shipyards (29 CFR 1915.51(d)(2)(iv)), as well as the general Respiratory Protection standards (29 CFR 1910.134, 1915.154).

In response to the 2017 NPRM, some commenters expressed concern about the degree of protection afforded by other OSHA standards (Document ID 2135, p. 7; 2118, p. 5). For example, NABTU ''strongly disagree[d]'' with the notion that baseline usage of respirators and PPE ''is far higher in construction and shipyards'' than it is in other sectors (Document ID 2135, p. 7). Likewise, BHSC questioned the degree of protection afforded by the other OSHA standards to workers near abrasive blasting operations, stating that the estimated 100 percent PPE use for those workers ''does not have supporting evidence of consistent and standard use across pot tenders and cleanup activities supporting abrasive blasting'' (Document ID 2118, p. 5).

OSHA requests comments both on its proposal to delete paragraph (g)(1)(iv) and on whether it is necessary to maintain the other general provisions for respiratory protections in the beryllium standards in light of protections afforded by other OSHA standards.

Paragraph (h) Personal Protective Equipment

Paragraph (h) of the beryllium standards for the construction and shipyards industries (29 CFR 1926.1124(h) and 1915.1024(h), respectively) requires employers to provide and ensure the use of personal protective clothing and equipment (PPE) where employees have actual or reasonably expected dermal exposure or high levels of airborne exposure to beryllium, and also contains provisions pertaining to the removal, storage, cleaning, and replacement of the PPE. To comply with paragraph (h), employers are expected to choose the appropriate type of PPE for their employees based on the results of the employer's hazard assessment (82 FR at 2682).

Specifically, paragraph (h)(1) requires employers to provide and ensure that each employee uses appropriate PPE in accordance with the written exposure control plan and OSHA's general PPE standards for the construction and shipyards industries (29 CFR part 1926, subpart E, and part 1915, subpart I), in two situations: (1) Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL (paragraph (h)(1)(i)), and (2) where there is a reasonable expectation of dermal contact with beryllium (paragraph (h)(1)(ii)).

Paragraphs (h)(2) and (3) of the construction and shipyards beryllium standards provide requirements for removal, storage, cleaning, and replacement of the PPE required by paragraph (h)(1). Paragraph (h)(2)(i) requires employers to ensure that each employee removes all beryllium-contaminated PPE at the end of the work shift, at the completion of tasks involving beryllium, or when PPE becomes visibly contaminated with beryllium, whichever comes first. Paragraph (h)(2)(ii) requires employees to remove PPE consistent with the written exposure control plan required by paragraph (f)(1), and paragraph (h)(2)(iii) requires employers to ensure both that protective clothing is kept separate from employees' street clothing, and that storage facilities prevent cross-contamination as specified in the written exposure control plan. Paragraph (h)(2)(iv) requires employers to ensure that beryllium-contaminated PPE is only removed from the workplace by employees who are authorized to do so for the purpose of laundering, cleaning, maintaining, or disposing of such PPE, and paragraph (h)(2)(v) requires that PPE removed from the workplace for laundering, cleaning, maintenance, or disposal be placed in closed, impermeable, and appropriately labeled bags or containers.

Paragraph (h)(3) of the standards establishes several requirements with respect to cleaning and replacement of PPE. Paragraph (h)(3)(i) requires employers to ensure that all reusable PPE is appropriately cleaned, laundered, repaired, and replaced as needed to maintain its effectiveness, while paragraph (h)(3)(ii) mandates that employers ensure that beryllium is not removed from PPE by blowing, shaking or any other means that disperses beryllium into the air. Paragraph (h)(3)(iii) requires employers to inform in writing the persons or the business entities who launder, clean, or repair the PPE used to comply with paragraph (h) of the potentially harmful effects of airborne exposure to and dermal contact with beryllium, and that the PPE must be must be handled in accordance with the beryllium standard.

In the 2017 NPRM, OSHA identified several other OSHA standards that require employees engaged in abrasive blasting operations (in construction and shipyards) and welding operations (in shipyards) to use PPE during their work. Additionally, subsequent to the 2017 final rule, OSHA clarified in the general industry DFR that the agency only intended to regulate contact with trace beryllium to the extent that it caused airborne exposures of concern. OSHA never intended for provisions aimed at protecting workers from the effects of dermal contact to apply in the case of materials containing only trace amounts of beryllium absent significant airborne exposures (83 FR at 19938).

In response to the 2017 proposal, commenters criticized OSHA's estimates regarding the existing use of PPE in the affected construction and shipyard operations. NABTU ''strongly disagree[d]'' with OSHA's statement in the 2017 NPRM (82 FR at 29216) that ''[b]aseline usage of respirator and PPE is far higher in construction and shipyards'' than in general industry (Document ID 2135, p. 7). Members of Congress commented that OSHA's preliminary estimate that all affected employees already use full PPE 100 percent of the time (see 82 FR at 29197) did ''not appear to be supported by testimony from the hearing, which suggests that while the abrasive blasters may have protections, there is limited or no protection for many other workers, including bystanders, who are exposed to beryllium-containing dust under the pre-existing standards'' (Document ID 2135, p. 7). BHSC also expressed concern about the degree of protection afforded by the other OSHA standards to workers near abrasive blasting operations, stating that the estimated 100 percent PPE use for those workers ''does not have supporting evidence of consistent and standard use across pot tenders and cleanup activities supporting abrasive blasting'' (Document ID 2118, p. 5). Commenters

also noted that generalized PPE requirements do not always signal to employers and employees that PPE is needed to protect against beryllium (see, *e.g.,* Document ID 2124, pp. 10–11; 2129, p. 7; 2129, pp. 9–10; 2135, pp. 5–6).

In light of these comments and its review of existing standards, OSHA determined in the rule finalizing the 2017 proposal (the final rule published September 30, 2019) that existing OSHA standards applicable to construction and shipyards do not provide complete overlap with the PPE provisions of the beryllium standards for construction and shipyards. Consistent with OSHA's usual approach to regulating employee exposure to other harmful substances (see, *e.g.,* 52 FR 46168, 46271–72 (Dec. 4, 1987) (discussing the PPE provisions in the formaldehyde standard)), OSHA expects a specific PPE requirement in the beryllium standards will provide a valuable supplement to the generally-applicable PPE standards by clearly explaining when PPE is necessary to protect employees from beryllium exposure. OSHA believes it is necessary to retain the provisions that are aimed at protecting employees who are exposed at airborne levels of concern from inhalation of re-entrained beryllium-containing dust, including the requirement to provide and use appropriate PPE when airborne exposure exceeds, or can be reasonably expected to exceed, the TWA PEL or STEL, as well as some requirements pertaining to removal, storage, cleaning, and replacement of PPE. As NABTU commented in response to the 2017 proposal, PPE requirements are necessary because they address the risk of exposure during the PPE removal process and the risk of additional inhalation exposure from accumulation on clothing, shoes, and equipment (Document ID 2129, p. 7 (citing 82 FR at 2678)).

At the same time, in light of the clarifications in the DFR and other comments on the 2017 proposal, OSHA has preliminarily determined that some revisions to paragraph (h) in the beryllium standards for the construction and shipyards industries are warranted. Accordingly, OSHA is proposing a number of changes to paragraph (h) of the construction and shipyards standards.

First, OSHA is proposing to remove the requirement to provide and ensure the use of PPE when there is reasonably expected dermal contact with beryllium (paragraph (h)(1)(ii)). OSHA clarified in the 2018 DFR for general industry that it did not intend to require employers who only work with materials containing trace amounts of beryllium to protect employees or other individuals against dermal contact with beryllium absent significant airborne exposures. As discussed above, in the construction and shipyards sectors, the operations that cause airborne exposure to beryllium that can exceed the TWA PEL or STEL are either blasting operations that involve materials or generate particulate matter containing less than 0.1 percent beryllium by weight or are welding operations in shipyards where there is minimal or no skin contamination. Accordingly, OSHA is proposing to remove the requirement to provide and ensure the use of PPE when there is reasonably expected dermal contact with beryllium because it is not aware of any operations in the construction or shipyard sectors in which dermal contact with beryllium would occur at levels above trace amounts, making such a provision unnecessary.[5]

OSHA proposes to modify the PPE removal and storage provisions of paragraph (h)(2). OSHA is proposing to modify paragraph (h)(2)(i) by removing the requirement that PPE be removed when it becomes visibly contaminated with beryllium. OSHA is also proposing to revise (h)(2)(i) to remove the qualifier of ''beryllium-contaminated'' and add ''required by this standard'' so that the provision would apply to all PPE required by the beryllium construction and shipyard standards. The 2018 DFR modified the general industry beryllium standard to define *contaminated with beryllium* and *beryllium-contaminated* as ''contaminated with dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight'' (83 FR at 19939). As explained above, OSHA believes there are no operations covered by the construction or shipyard beryllium standards that would create such a beryllium-contaminated surface. In fact, the vast majority of the operations (abrasive blasting) involve beryllium in concentrations of less than 0.1 percent by weight. In blasting operations, the requirement to remove PPE visibly contaminated with beryllium would thus rarely, if ever, be triggered. Likewise, there would be no beryllium-contaminated PPE at any of these covered worksites. OSHA has preliminarily determined, however, that if workers are using PPE because they are working with trace amounts of beryllium but nevertheless have the potential for airborne exposure above the TWA PEL or STEL, they are likely in highly dusty environments and accumulating large amounts of dust on their PPE. OSHA therefore believes it is necessary to continue to require employees to remove their PPE at the end of the work shift or all tasks involving beryllium because otherwise, this highly dusty PPE could be re-entrained into the air and contribute to the airborne exposure of workers who already are, or can reasonably be expected to be, exposed above the TWA PEL or STEL.

OSHA is proposing to modify paragraph (h)(2)(ii) to ensure that PPE is not removed in a manner that disperses beryllium into the air. This can be accomplished by cleaning the PPE prior to removal or carefully removing the PPE so as not to disturb the dust. OSHA is proposing to remove the requirement for employers to ensure that employees remove PPE in accordance with the written exposure control plan because, as explained above in the summary and explanation of paragraph (f)(1), OSHA is proposing to remove the requirement in the written exposure control plan (paragraph (f)(1)(i)(H)) to include procedures for doffing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated PPE, including respirators. This proposed language is similar to that in paragraph (h)(3)(ii), which addresses the cleaning of PPE rather than the removal of PPE.

OSHA is proposing to remove paragraphs (h)(2)(iii) and (iv) from the construction and shipyard standards. Paragraph (h)(2)(iii) requires the employer to ensure that each employee stores and keeps beryllium-contaminated personal protective clothing and equipment separate from street clothing and that storage facilities prevent cross-contamination as specified in the written exposure control plan required by paragraph (f)(1) of this standard. Paragraph (h)(2)(iv) requires employers to ensure that beryllium-contaminated PPE is only removed from the workplace by employees who are authorized to do so for the purpose of laundering, cleaning, maintaining, or disposing of such PPE. As explained in the 2018 general industry DFR, OSHA defined ''beryllium-contaminated'' as

[5] As a result of the proposed elimination of paragraph (h)(1)(ii), OSHA is also proposing to collapse paragraph (h)(1)(i) into paragraph (h)(1), which would have no subparagraphs or items. Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, proposed paragraph (h)(1) would require employers to provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under paragraph (f)(1) of this standard and OSHA's Personal Protective and Life Saving Equipment standards for construction (29 CFR part 1926, subpart E).

contaminated with dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight because the agency never intended for provisions aimed at protecting workers from the effects of dermal contact with beryllium to apply in the case of materials containing only trace amounts of beryllium. Because OSHA believes there are no operations covered by the construction or shipyard beryllium standards involving beryllium dust, fumes, mists, or solutions in more than trace amounts, the requirements pertaining to beryllium-contaminated PPE in the construction and shipyard standards would never be triggered and are unnecessary.

With regard to the cleaning and replacement procedures in paragraph (h)(3) of the standards, OSHA is proposing to clarify that paragraph (h)(3)(ii) applies to PPE required by the beryllium standard. This proposed change would assure employers that if dust containing trace amounts of beryllium migrates to the PPE of employees who are not reasonably expected to have airborne exposure to beryllium above the TWA PEL or STEL, the beryllium standard allows the employer to provide employees the opportunity to clean their PPE in a manner that disperses that dust into the air. This proposed change is consistent with OSHA's goal of protecting employees who are already exposed at airborne levels of concern from inhalation of re-entrained beryllium-containing dust.

OSHA is proposing to remove paragraphs (h)(2)(v) and (h)(3)(iii) from the standards. Paragraph (h)(2)(v) requires that PPE removed from the workplace for laundering, cleaning, maintenance, or disposal be placed in closed, impermeable bags or containers labeled in accordance with paragraph (m)(2) of the construction standard and paragraph (m)(3) of the shipyards standard, as well as the Hazard Communication standard. Paragraph (h)(3)(iii) requires employers to inform, in writing, any person or business entity who launders, cleans, or repairs PPE required by the standards of the potentially harmful effects of exposure to airborne beryllium and dermal contact with beryllium, and of the need to handle the PPE in accordance with the standards. These provisions are in place to protect individuals who later handle beryllium-contaminated items (82 FR at 2683). Because, as explained in the 2018 general industry DFR, OSHA never intended for provisions aimed at protecting workers from the effects of dermal contact with beryllium to apply in the case of materials containing only trace amounts of beryllium, OSHA has preliminarily determined that it is not necessary to protect downstream handlers of PPE that have only come in contact with dust containing beryllium in trace amounts. OSHA has no reason to expect these downstream handlers are engaging in tasks that generate airborne exposures of concern such that re-entrainment of the dust would exacerbate an already-significant lung burden. OSHA therefore proposes to remove these two paragraphs from the construction and shipyard beryllium standards.

The agency welcomes comment on these proposed revisions to paragraph (h).

Paragraph (i) Hygiene Areas and Practices

Paragraph (i) of the 2017 final rule established requirements for hygiene areas and practices in general industry (29 CFR 1910.1024), construction (29 CFR 1926.1024), and shipyards (29 CFR 1915.1024). As promulgated, paragraph (i) requires employers in all three industries to: (1) Provide readily accessible washing facilities to remove beryllium from the hands, face, and neck (paragraph (i)(1)(i)); (2) ensure that employees who have dermal contact with beryllium wash any exposed skin (paragraph (i)(1)(ii)); (3) provide change rooms if employees are required to use personal protective clothing and are required to remove their personal clothing (paragraph (i)(2)); (4) ensure that employees take certain steps to minimize exposure in eating and drinking areas (paragraph (i)(3)); and (5) ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in areas where there is a reasonable expectation of exposure above the TWA PEL or STEL (paragraph (i)(4)).

While emphasizing the importance of hygiene areas and practices in the final rule, OSHA also acknowledged that the sanitation standards in general industry (29 CFR 1910.41), construction (29 CFR 1926.51), and shipyards (29 CFR 1915.88) include provisions similar to some of those in the beryllium standards. For example, the sanitation standards include hygiene provisions requiring the employer to provide change rooms with separate storage facilities for protective clothing whenever employees are required by an OSHA standard to wear protective clothing. The sanitation standards also require employers to provide wash facilities and prohibits storage or consumption of food or beverages in any area where employees are exposed to a toxic material (82 FR at 2684). While extending these provisions to the construction and shipyards industry in the 2017 final rule, OSHA acknowledged that exposures to beryllium in these industries are limited to only a few operations. OSHA further acknowledged this overlap in the FEA for the 2017 final rule, stating that employers of abrasive blasters exposed to beryllium in construction and shipyards are typically already required to provide readily accessible washing facilities to comply with other OSHA standards (see 82 FR at 2609). Nonetheless, OSHA applied similar requirements to these industries as to general industry, where the operations with beryllium exposure are significantly more varied and employees are often exposed to materials with significantly higher beryllium content and where dermal contact can be of particular concern.

After publishing the 2017 final rule, OSHA clarified in the general industry DFR that the agency only intended to regulate contact with trace beryllium to the extent that it causes airborne exposures of concern. OSHA did not intend for provisions aimed at protecting workers from the effects of dermal contact to apply in the case of materials containing only trace amounts of beryllium (83 FR at 19938). Unlike in general industry, where processes involving exposure to beryllium are varied and employees are exposed to a large variety of materials that can contain high concentrations of beryllium, exposures in the construction and shipyards industries are limited to abrasive blasting operations in construction and shipyards and a small number of welding operations in shipyards (Document ID 2042, FEA Chapter III, pp. 103–11 and Table III–8e). While the extremely high airborne exposures during abrasive blasting operations can expose workers to beryllium in excess of the PEL, the blasting materials contain only trace amounts of beryllium (Document ID 2042, FEA Chapter IV, p. 612). Moreover, the record before the agency contains evidence of beryllium exposure during only limited welding operations in shipyards (Document ID 2042, FEA Chapter III, Table III–8e) and as discussed above, OSHA has preliminarily determined that for these limited welding operations the exposure of concern is exposure to airborne beryllium and not dermal contact.

Unlike the general industry standard, which triggers PPE as well as other provisions on both the PELs and the potential for dermal contact or beryllium-contaminated surfaces,

construction and shipyards activities under this standard do not have operations where skin contact is the exposure of concern. In light of the existing OSHA standards providing many of the same protections as the beryllium standards, the limited operations where beryllium exposure may occur in construction and shipyards, and the trace quantities of beryllium present in these operations, OSHA now believes that the requirements for hygiene areas and practices in the 2017 beryllium standards for construction and shipyards may be unnecessary to protect employees in these industries. Accordingly, the agency is proposing to remove paragraph (i) from the construction and shipyard standards.

In response to the 2017 NPRM proposing to revoke the ancillary provisions from the shipyards and construction standards, OSHA received only two comments that specifically addressed paragraph (i). One comment, from NABTU, expressed the need for hygiene requirements such as washing facilities, change rooms, and eating and drinking areas to prevent the spread of beryllium, noting that ''[w]hen beryllium-exposed workers are afforded washing and clean-up areas, all construction workers on the site are protected from exposure'' (Document ID 2129, p. 7). On the other hand, the Abrasive Blasting Manufacturers Alliance (ABMA) identified a number of existing standards, including the sanitation standards, applicable to employees in construction and shipyards, and argued that these provisions provide adequate protection from exposure to beryllium. ABMA also indicated that hygiene practices are utilized during abrasive blasting regardless of the beryllium standard due to other substance-specific standards, such as lead, hexavalent chromium, cadmium, and arsenic, which require employees who are exposed to these materials through abrasive blasting to wash their hands and face. Though not a requirement, they also cite OSHA's 2006 guidance on abrasive blasting for shipyards, which recommends good hygiene practices (Document ID 2142, pp. 9–10; 2124 attachment 1, p. 6).

OSHA agrees with both commenters: beryllium-exposed workers should have access to washing facilities, and existing standards require the use of washing facilities for those workers in construction and shipyards. In addition, the sanitation standard for construction (29 CFR 1926.51(f)) requires employers to provide adequate washing facilities maintained in a sanitary condition for employees engaged in operations where contaminants may be harmful to the employees. It also requires that these washing facilities must be in proximity to the worksite and must be so equipped as to enable employees to remove such substances. Lavatories are also required at all places of employment and must be equipped with hot and cold running water, or tepid running water. Hand soap or similar cleansing agents must be provided along with hand towels, air blowers, or clean continuous cloth toweling, convenient to the lavatories.

The sanitation standard for shipyards (29 CFR 1915.88(e)) similarly requires employers to provide handwashing facilities at or adjacent to each toilet facility. The criteria for these handwashing facilities are similar to the construction industry in that they must be equipped with hot and cold running water or tepid running water, soap, or skin cleansing agents capable of disinfection or neutralizing the contaminant, and drying materials and methods. This standard further requires the employer to inform each employee engaged in operations in which hazardous or toxic substances can be ingested or absorbed about the need for removing surface contaminants from their skin's surface by thoroughly washing their hands and face at the end of the work shift and prior to eating, drinking, or smoking (see 29 CFR 1915.88(e)(3)).

Even though the sanitation standards do not specifically mention beryllium, the use of the terms *harmful substances* in the construction sanitation standard and *hazardous or toxic substance* in the shipyard sanitation standard encompass beryllium exposure where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL. With respect to abrasive blasting, the sanitation standards' washing facilities requirements are triggered by the use of blasting media; either due to contaminants in the blasting media (which may include beryllium, lead, hexavalent chromium, cadmium, and arsenic) or contamination from the substrate or coatings on the substrate. Similarly, in the limited welding operations involving beryllium exposure, workers will likely be exposed to other hazardous chemicals (including hexavalent chromium, lead, and cadmium) (see *https://www.osha.gov/SLTC/weldingcuttingbrazing/chemicals.html*), triggering the requirements of the sanitation standards. Accordingly, the sanitation standards provide comparable protections to the washing facilities requirements that OSHA is proposing to remove from both the construction and shipyard standards (paragraphs (i)(1)(i) and (ii)).

OSHA is also proposing to remove the requirement for employers to provide change rooms where employees are required to remove their personal clothing (paragraph (i)(2)), because the sanitation standards already provide comparable protections. The sanitation standard for construction (29 CFR 1926.51(i)) requires employers to provide change rooms if a particular standard requires employees to wear protective clothing because of the possibility of contamination with toxic materials. The change rooms must be equipped with storage facilities for street clothes and separate storage facilities for the protective clothing shall be provided.

Similarly, the sanitation standard for shipyards (§ 1915.88(g)) requires change rooms when the employer provides protective clothing to prevent employee exposure to hazardous or toxic substances. Furthermore, the employer must provide change rooms that provide privacy and storage facilities for street clothes, as well as separate storage facilities for protective clothing. Because these proposed beryllium standards would require PPE where exposures may exceed the TWA PEL or STEL, employers would be required to provide change rooms under the sanitation standards (if employees were required to remove their personal clothing),[6] just as they would have been required by the beryllium standards.

OSHA is further proposing to remove paragraph (i)(3), which establishes provisions for eating and drinking areas, from the construction and shipyard standards. The provisions in the sanitation standards for construction (§ 1926.51(g)) and shipyards (§ 1915.88(h)) already require employers to ensure that food, beverages, and tobacco products are not consumed or stored in any area where employees may be exposed to hazardous or toxic materials.

OSHA is also proposing to remove paragraphs (i)(3)(i) and (ii) of the construction and shipyards standards, which require that surfaces in eating and drinking areas be kept as free as practicable of beryllium (paragraph (i)(3)(i)) and that employees remove or clean contaminated clothing prior to entering these areas (paragraph (i)(3)(ii)). These provisions relate to

[6] Through interpretive guidance, OSHA has explained that the sanitation standards require the provision of change rooms only where employees must change their clothes (*i.e.,* remove their street clothes) (see OSHA, Letter of Interpretation, Feb. 22 1996, available at *https://www.osha.gov/laws-regs/standardinterpretations/1996-02-22-1*).

minimizing dermal contact. However, as explained above, OSHA intends that provisions meant to reduce dermal contact should typically be applied to materials containing trace amounts of beryllium only where there is also the potential for significant airborne exposure. OSHA has preliminarily determined that the processes in construction and shipyards creating exposure to beryllium are either processes that involve materials containing less than 0.1% beryllium by weight or processes that do not produce surface or skin contamination.

OSHA further believes that other parts of the beryllium standard will reduce the potential for airborne beryllium in eating and drinking areas. For example, when employees are cleaning up dust resulting from operations that cause, or can reasonably be expected to cause airborne exposures over the TWA PEL or STEL, the employer must ensure the use of methods that minimize the likelihood and level of airborne exposure. And under proposed paragraph (h)(2)(ii), employers must ensure that PPE required by the standard is not removed in a manner that disperses beryllium into the air. Given that construction and shipyard operations primarily involve only trace amounts of beryllium, and other provisions of the beryllium standard such as engineering controls and housekeeping requirements serve to minimize airborne exposures, OSHA believes that existing standards adequately protect employees in eating and drinking areas.

OSHA is also proposing to remove the reference in paragraph (i)(3)(iii) requiring that eating and drinking facilities provided by the employer must be in accordance with the sanitation standards. OSHA does not believe it is necessary to maintain this reference, as this would be the only requirement remaining in paragraph (i) and employers are required to comply with the sanitation standards regardless.

Finally, OSHA is proposing to remove paragraph (i)(4), concerning prohibited activities, which requires the employer to ensure that no employees eat, drink, smoke, chew tobacco or gum, or apply cosmetics in work areas where there is a reasonable expectation of exposure above the TWA PEL or STEL. The sanitation standards prohibit consuming food or beverages in areas exposed to toxic material and therefore provides the appropriate protections for areas where exposures are above the PEL. The sanitation standards are substantially similar to paragraph (i)(4) and provide appropriate protections for areas where exposures are above the PEL.

In summary, for the reasons discussed above, OSHA is proposing to remove paragraph (i), hygiene areas and practices, from the beryllium standards for construction and shipyards. OSHA requests comment on the proposed removal of paragraph (i). OSHA particularly welcomes comments and data on the use of wash facilities and changes rooms in construction and shipyards for operations that would be covered by the beryllium standards.

Paragraph (j) Housekeeping

The 2017 final beryllium rule includes provisions for housekeeping. It requires employers in both construction and shipyards to follow the cleaning procedures in their written exposure control plan, clean up spills and emergency releases promptly, use appropriate cleaning methods, and provide recipients of beryllium containing materials for disposal with a copy of the warnings described in paragraph (m) (82 FR at 2688). In the preamble to the 2017 final rule, OSHA indicated that these provisions are important because they minimize sources of exposure to beryllium that engineering controls do not completely eliminate. Good housekeeping measures are a cost-effective way to control worker exposures by removing settled beryllium that could otherwise become re-entrained into the surrounding atmosphere by physical disturbances or air currents and could enter an employee's breathing zone and increase potential dermal contact (82 FR at 2689).

OSHA also acknowledged that different approaches may be warranted for the housekeeping provisions for construction and shipyards than for general industry due to the nature of the materials and work processes typically used in construction and shipyards (82 FR at 2690). As discussed previously with respect to paragraph (f), although OSHA extended these provisions to the construction and shipyards industry in the 2017 final rule, OSHA also recognized that beryllium exposure in these industries is mainly limited to abrasive blasting in construction and shipyards and a small number of welding operations in shipyards (Document ID 2042, FEA Chapter III, pp. 103–11 and Table III–8e). While the extremely high airborne exposures during abrasive blasting operations can expose workers to beryllium in excess of the PEL, the blasting materials contain only trace amounts of beryllium (Document ID 2042, FEA Chapter IV, p. 612). Moreover, the record before the agency contains evidence of beryllium exposure during only limited welding operations in shipyards (Document ID 2042, FEA Chapter III, Table III–8e). Nonetheless, OSHA applied most of the same requirements to these industries as to general industry,[7] where the operations with beryllium exposure are significantly more varied and employees are exposed to materials with significantly higher content beryllium.

OSHA is reconsidering this approach in the construction and shipyards industries. In June 2017, OSHA proposed to rescind the ancillary provisions for the construction and shipyard beryllium standards, citing previously-existing OSHA standards that the agency surmised could duplicate some provisions of the 2017 standards. OSHA cited the construction ventilation standard, which requires that dust not be allowed to accumulate outside abrasive blasting enclosures and that spills be cleaned up promptly (29 CFR 1926.57(f)(7)). Likewise, certain provisions of OSHA's general ventilation standard for abrasive blasting (29 CFR 1910.94(a)) also apply to shipyards. Similar to the construction ventilation standard, the general ventilation standard contains the following requirements for abrasive blasting: ''[d]ust shall not be permitted to accumulate on the floor or on ledges outside of an abrasive-blasting enclosure, and dust spills shall be cleaned up promptly. . . .'' (29 CFR 1910.94(a)(7)).

While some comments OSHA received on the proposed revocation of paragraph (j) supported revocation on the basis of overlapping and duplicative provisions (*e.g.,* ABMA, Document ID 2142), several commenters argued that the 2017 provisions offer beryllium-exposed workers significant additional protection. For example, NABTU indicated that the ventilation standard does not prohibit dry sweeping or brushing, which are prohibited by the 2017 beryllium standards except in rare circumstances (Document ID 2129, p. 7). AFL–CIO similarly commented that the use of dry sweeping and compressed air increase exposures in workers' breathing zone, and should be prohibited (Document ID 2140, p. 8).

In light of these comments and the agency's review of existing standards, OSHA acknowledged in the rule finalizing the 2017 proposal, published

[7] Due to the transient nature of the work processes in construction and shipyards and the fact that most of the work occurs outside, OSHA decided not to require employers in these industries to maintain all surfaces as free as practicable of beryllium, as it had done in general industry. Rather, the agency required employers in these industries to follow their written exposure control plan when cleaning beryllium-contaminated areas (82 FR at 2690).

on September 30, 2019, that existing standards do not duplicate all of the protections provided by paragraph (j). OSHA believes that some of these beryllium-specific provisions remain necessary to protect workers in the construction and shipyards industries. At the same time, given the very narrow set of affected operations and the existence of some overlap between the 2017 standards and already-existing rules, OSHA also believes that some provisions in paragraph (j)—although appropriate in the general industry context—may be unnecessary to protect employees in the construction and shipyards industries.

Moreover, as discussed above in the Introduction, after publishing the 2017 final rule, OSHA clarified in the general industry DFR that the agency only intended to regulate contact with trace beryllium to the extent that it caused airborne exposures of concern. OSHA never intended for provisions aimed at protecting workers from the effects of dermal contact to apply in the case of materials containing only trace amounts of beryllium (83 FR at 19938). OSHA also discusses in the Introduction that the agency has preliminarily determined that the limited welding processes in shipyards create only a trace amount of surface contamination. Because exposures in the construction and shipyards industries are limited almost entirely to abrasive blasting with materials containing trace amounts of beryllium or welding on materials where surface contamination is not a source of exposure, OSHA believes additional revisions to paragraph (j) may be warranted. For these reasons, OSHA is proposing several revisions to paragraph (j) in both the construction and shipyards standards.

First, OSHA is proposing to remove paragraph (j)(1) (general requirements for housekeeping) from the construction and shipyards standards. This provision currently requires employers to follow the written exposure control plan when cleaning beryllium-contaminated areas (paragraph (j)(1)(1)) and to ensure that spills and emergency releases of beryllium are cleaned up promptly (paragraph (j)(1)(2)). As discussed above, the ventilation standard for construction (29 CFR 1926.57(f)(7)) and OSHA's general ventilation standard (29 CFR 1910.94(a)) require prompt cleanup of spills during abrasive blasting in construction and shipyards, the primary sources of beryllium exposure in these industries. OSHA believes that routine general housekeeping and housekeeping related to spills are adequately covered by the existing ventilation standards in these sectors, and is proposing to eliminate paragraph (j)(1) of the final standards. Additionally, because the housekeeping provisions are triggered by only one operation (abrasive blasting) in construction and shipyards, this operation uses materials with only trace quantities of beryllium, and the main objective of these provisions is to minimize airborne exposure, OSHA has preliminarily determined that a unique written plan for how to clean is unnecessary in this context. OSHA notes that this is in contrast to general industry, where there is the concern for protecting from both dermal contact and airborne exposures over a variety of materials and processes and where employers may need to have more complicated or unique cleaning procedures to adequately protect workers.

With respect to cleaning methods currently required by paragraph (j)(2), OSHA agrees with comments submitted by NABTU and AFL–CIO in response to the 2017 NPRM that the cleaning provisions in existing ventilation standards (29 CFR 1926.57(f)(7) and 29 CFR 1910.94(a)) do not provide the additional protections of prohibiting methods of cleaning that are likely to increase exposure in the breathing zone of the workers. Therefore, OSHA is retaining the existing requirements in the following paragraphs, renumbered in this proposal: Paragraph (j)(1), with revision (requiring the use of cleaning methods that minimize the likelihood and level of airborne exposure); (j)(2) (prohibiting dry sweeping or brushing unless other methods are not safe or effective); (j)(3), with revision (limiting the use of compressed air for cleaning); (j)(4), with revision (requiring respirator use and PPE where employees use dry sweeping, brushing, or compressed air to clean); and (j)(5) (requiring cleaning equipment to be handled and maintained so as to reduce airborne exposure and re-entrainment of airborne beryllium). Specific proposed revisions to these paragraphs are discussed below.

First, OSHA is proposing to revise paragraph (j)(2)(i), renumbered as paragraph (j)(1), to remove the reference to ''HEPA filtered vacuuming.'' In the unique context of abrasive blasting, where operations produce copious amounts of dust, the use of HEPA vacuums may be problematic due to filter overload and clogging which in fact may cause additional exposures. This, too, is in contrast to general industry, where the content and amount of beryllium-containing dust or debris are varied and where HEPA filters can minimize the amount of beryllium that is re-entrained into the air.

Next, OSHA is proposing to revise both paragraphs (j)(2)(i) and (ii)—renumbered as paragraphs (j)(1) and (2), respectively—to remove the phrase ''beryllium-contaminated areas.'' Proposed paragraph (j)(1) would now require the use of methods that minimize the likelihood and level of airborne exposure when cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL. Similarly, proposed paragraph (j)(2) would prohibit dry sweeping or brushing for cleaning dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL, unless methods that minimize the likelihood and level of airborne exposure are not safe and effective.

OSHA intends for these provisions to still apply where workers are either working in regulated areas in shipyards or in areas with exposures above the TWA PEL or STEL in construction. In the 2018 DFR, OSHA modified the general industry beryllium standard to define ''contaminated with beryllium'' and ''beryllium-contaminated'' as contaminated with dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight (83 FR at 19939–40). As explained above, OSHA believes there are no operations covered by the construction or shipyard beryllium standards that would create such a beryllium-contaminated surface. In fact, the vast majority of the operations (abrasive blasting) involve beryllium in concentrations of less than 0.1 percent by weight. If OSHA maintained the term ''beryllium-contaminated,'' the requirements for when and how employers can use dry sweeping, brushing, or compressed air would rarely, if ever, be triggered and workers already exposed could have additional exposures.

Accordingly, OSHA is instead proposing to trigger the requirements in paragraphs (j)(1) and (2) on the presence of dust produced by operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL to ensure that beryllium is not re-entrained in areas where there are already high exposures. By referencing the presence of dust produced by these operations, rather than the operation itself, OSHA intends for these requirements to apply regardless of whether the operation is ongoing (*i.e.* whether abrasive blasting is taking place at the time of the cleaning).

Similarly, OSHA is proposing to revise paragraph (j)(2)(iii), renumbered

as paragraph (j)(3), to remove the reference to ''beryllium-contaminated areas'' and to prohibit the use of compressed air for cleaning where the use of compressed air causes, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL. This is a change from the existing requirement, which prohibits the use of compressed air ''unless the compressed air is used in conjunction with a ventilation system designed to capture the particulates made airborne by the use of compressed air.'' This change limits when an employer can use compressed air for cleaning under these standards. In the 2017 final rule, OSHA determined that the use of compressed air might occasionally be necessary in general industry (82 FR at 2693). Similarly, for construction and shipyards, OSHA intended to prohibit the use of compressed air during cleaning of beryllium contaminated areas or materials designated for recycling or disposal unless used in conjunction with a ventilation system. This is similar to other construction standards such as lead (29 CFR 1926.62) and silica (29 CFR 1926.1153).

However, OSHA has reconsidered whether the use of ventilation with compressed air is practical when cleaning areas with copious amounts of dust produced during abrasive blasting. Therefore, OSHA is proposing a practical measure for when the use of compressed air for cleaning is allowed. OSHA is proposing to limit the use of compressed air to circumstances in which there is a limited quantity of dust which, if re-entrained, would not result in exposures above the TWA PEL or STEL. OSHA requests comment on whether compressed air is used in construction for cleaning abrasive blasting areas and the feasibility or practicality of the use of ventilation systems under these conditions.

The agency is next proposing to revise paragraph (j)(2)(iv), renumbered as paragraph (j)(4), to remove the phrase ''in beryllium-contaminated areas,'' for the reasons already discussed. Because under this proposal, the rest of paragraph (j) would no longer reference beryllium-contaminated areas, OSHA is proposing to remove the reference from paragraph (j)(4) and to require the use of respiratory protection and PPE in accordance with paragraphs (g) and (h) whenever employees use dry sweeping, brushing, or compressed air.[8]

Next, OSHA is proposing to remove paragraph (j)(3) of the standards, which requires that, when transferring beryllium-containing materials to another party for use or disposal, employers provide the recipient a copy of the warning label currently required by paragraph (m). As part of this proposal, OSHA is also proposing to remove the labeling requirement in paragraph (m). As noted above, all beryllium-containing materials in the shipyard and construction industries contain or produce only trace amounts of beryllium. Accordingly, this proposed revision is consistent with OSHA's intention, explained in the May 2018 general industry DFR, that provisions aimed at protecting workers from the effects of dermal contact do not apply to materials containing only trace amounts of beryllium, such as abrasive blasting media, unless those workers are also exposed to airborne beryllium at or above the action level (83 FR at 19940). It also aligns with the housekeeping provisions of the general industry rule (as modified by the DFR), which do not require labeling for materials which contain only trace quantities of beryllium and are designated for disposal, recycling, or reuse.

In response to the July 2017 NPRM, Materion commented that labeling requirements found in the Hazard Communication standard (29 CFR 1910.1200) are an appropriate standard to apply under these circumstances (Document ID 2145, p. 40). OSHA preliminarily agrees with Materion that the HCS requirements provide the appropriate information for spent abrasive blasting media containing only trace amounts of beryllium, where the material may be contaminated with several toxic chemicals such as hexavalent chromium or lead from the blasted substrate or coating on the substrate (see OSHA Fact Sheet, Protecting Workers from the Hazards of Abrasive Blasting Materials, available at *https://www.osha.gov/Publications/OSHA3697.pdf*). OSHA is concerned that providing warnings specific to beryllium for materials that contain trace beryllium and where airborne exposures are not anticipated to be significant might overshadow or dilute other hazard warnings (*e.g.,* lead). Therefore, OSHA is proposing to remove the specific labeling requirements for beryllium. However, OSHA continues to require that these materials be labeled according to the Hazard Communication standard and that, if appropriate, the hazards of beryllium must be addressed on the label and Safety Data Sheet (SDS).

The agency welcomes comment on these proposed revisions to paragraph (j). In particular, OSHA is interested in methods employers are using to clean abrasive blasting areas and how they minimize workers' exposures.

Paragraph (k) Medical Surveillance

The 2017 final beryllium rule includes provisions for medical surveillance. It requires employers in both construction and shipyards to offer eligible employees, at no cost to the employee, participation in the medical surveillance program. Paragraph (k) specifies requirements of the medical surveillance program, such as which employees are eligible for medical surveillance, as well as frequency and content of medical examinations.

As explained in the 2017 final rule, the purposes of medical surveillance for beryllium are: (1) To identify beryllium-related adverse health effects so that appropriate intervention measures can be taken; (2) to determine if an employee has any condition that might make him or her more sensitive to beryllium exposure; and (3) to determine the employee's fitness to use personal protective equipment such as respirators (82 FR at 2696). The inclusion of medical surveillance in the beryllium standard for construction and shipyards is consistent with section 6(b)(7) of the OSH Act (29 U.S.C. 655(b)(7)), which requires that, where appropriate, medical surveillance programs be included in OSHA health standards to aid in determining whether the health of employees is adversely affected by exposure to the hazards addressed by the standard.

In light of information the agency received following the publication of the 2017 final rule, including comments submitted in response to the 2017 NPRM and through the general industry rulemaking, OSHA is proposing several revisions to paragraph (k). First, OSHA is proposing to remove paragraph (k)(1)(i)(C), which requires employers to make medical surveillance required by this paragraph available to each employee who is exposed to beryllium during an emergency. As discussed previously in the summary and explanation for paragraph (g), OSHA is proposing to remove references to emergencies in the shipyards and construction standards because OSHA expects that any emergency in these industries (such as a release resulting from a failure of the blasting control equipment, a spill of the abrasive blasting media or the failure of the ventilation system during welding

[8] This proposal retains existing paragraph (j)(2)(v) without any changes, but renumbers it as paragraph (j)(5). Also, OSHA is proposing to remove the heading for ''Cleaning Methods'' and refer to these requirements only as ''Housekeeping,'' as is its usual treatment of such requirements in health standards.

operations in shipyards) would occur only during the performance of routine tasks already associated with the airborne release of beryllium; *i.e.,* during the abrasive blasting or welding process (see the summary and explanation for paragraph (g)). Therefore, employees would already be protected from exposure in such circumstances. Accordingly, OSHA is proposing to remove emergencies as a trigger for all provisions of the construction and shipyards standards, including medical surveillance (paragraph (k)(1)(i)(C)).[9]

Second, OSHA is proposing minor changes to paragraph (k)(3)(ii)(A), which currently requires the employer to ensure that the employee is offered a medical examination that includes a medical and work history, with emphasis on, among other things, past and present airborne exposure to or dermal contact with beryllium, and paragraph (k)(4)(i), which currently requires the employer to ensure that the examining physician or other licensed health care professional (PLHCP) (and the agreed upon CBD diagnostic center, if an evaluation is required under paragraph (k)(7) of this standard) has certain information, including a description of the employee's former and current duties that relate to the employee's airborne exposure to and dermal contact with beryllium, if known. Specifically, OSHA is proposing to clarify these provisions by replacing the phrase ''airborne exposure to and dermal contact with beryllium'' in these provisions with the simpler phrase ''exposure to beryllium.'' OSHA reasons that employees with beryllium exposure of any kind should have access to records of their exposure, and this information should also be made available to an examining PLHCP and CBD diagnostic center, if applicable. OSHA intends for this proposed change to alleviate any unnecessary confusion created by the use of the term ''dermal contact,'' which is defined in the general industry standard, but not in the construction and shipyards standards.

Third, OSHA is proposing two revisions to paragraph (k)(7)(i) of the construction and shipyards standards, which currently requires the employer to provide, at no cost to the employee, an evaluation at a CBD diagnostic center that is mutually agreed upon by the employee and employer within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). These proposed changes are consistent with changes the agency proposed to paragraph (k)(7)(i) of the beryllium standard for general industry in December 2018.

The first change relates to a proposed change to the definition of the term *CBD diagnostic center.* As discussed in more detail above, the current definition of that term in the construction and shipyards standards requires that the evaluation at the CBD diagnostic center include a pulmonary function test as outlined by American Thoracic Society (ATS) criteria, bronchoalveolar lavage (BAL), and transbronchial biopsy. OSHA proposes amending that definition to indicate that a CBD diagnostic center must be capable of performing those tests, but need not necessarily perform all the tests during all evaluations. OSHA intended for the employer to provide those tests if deemed appropriate by the examining physician at the CBD diagnostic center. Therefore, the agency proposes expanding paragraph (k)(7)(i) to require that the employer provide, at no cost to the employee and within a reasonable time after consultation with the CBD diagnostic center, any of the following tests if deemed appropriate by the examining physician at the CBD diagnostic center: A pulmonary function test as outlined by ATS criteria; BAL; and transbronchial biopsy. The proposed changes would ensure the employee receives those tests if recommended by the examining physician and receives them at no cost and within a reasonable time (83 FR at 63764). In addition, the revision would clarify its original intent that, instead of requiring all of those tests to be conducted after referral to a CBD diagnostic center, the standard would allow the examining physician at the CBD diagnostic center the discretion to select one or more of those tests as appropriate.

The second proposed change relates to the timing of the evaluation at the CBD diagnostic center. In the proposal for the 2017 final rule (the 2015 NPRM), OSHA proposed to require a consultation between the employee and the licensed physician within 30 days of the employee being confirmed positive to discuss a referral to a CBD diagnostic center, but there was no time limit for the employer to provide the evaluation at the CBD diagnostic center (80 FR 47800, Summary and Explanation for proposed paragraphs (k)(6)(i) and (ii)). In the final rule, OSHA altered this requirement, now in paragraph (k)(7)(i), to require that the examination at the CBD diagnostic center be provided within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B).

Following the publication of the 2017 final rule, stakeholders raised concerns that scheduling the appropriate tests with an examining physician at the CBD diagnostic center may take longer than 30 days, making compliance with this provision difficult. In the 2018 general industry NPRM, OSHA addressed this concern by proposing to revise paragraph (k)(7)(i) of the general industry standard to require that the employer provide an initial consultation with the CBD diagnostic center, rather than the full evaluation, within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). OSHA is proposing an identical change in this rule.

As explained in the 2018 general industry NPRM, OSHA believes that such a consultation could be scheduled with a physician within 30 days and could be provided by telephone or by virtual conferencing methods (83 FR at 63758). Providing a consultation before the full examination at the CBD diagnostic center demonstrates that the employer made an effort to begin the process for a medical examination. It also allows (1) the employee to consult with a physician to discuss concerns and ask questions while waiting for a medical examination, and (2) the physician to explain the types of tests that are recommended based on medical findings about the employee and the risks and benefits of undergoing such testing. Although this proposed change would allow the employer more time to provide the full evaluation, the proposed requirement to provide any recommended tests within a reasonable time after the initial consultation would also ensure that the employer secured an appointment for the evaluation in a timely manner. This proposed change would not prohibit the employer from providing both the consultation and the full evaluation at the same appointment, as long as the appointment is within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B).

OSHA received several comments on the proposed changes to the medical surveillance provisions discussed above from American Thoracic Society (ATS), NJH, Department of Defense (DoD), and Materion (Document ID OSHA–2018–

[9] Due to the proposed removal of paragraph (k)(1)(i)(C), OSHA is also proposing to add the word ''or'' at the end of paragraph (k)(1)(i)(B) (following the semi-colon), remove a reference to paragraph (k)(1)(i)(C) from paragraph (k)(2)(i)(B), and redesignate paragraph (k)(1)(i)(D) as paragraph (k)(1)(i)(C). In addition, to correspond with that redesignation, OSHA is proposing to replace the reference to paragraph (k)(1)(i)(D) in paragraph (k)(2)(ii) with a reference to proposed paragraph (k)(1)(i)(C).

003–0021, p. 3; 0022, p. 3–6; 0029, p. 2; 0038, p. 34). Materion agreed with OSHA's proposed changes (Document ID OSHA–2018–003–0038, p. 34). Other commenters including ATS, NJH and DoD expressed some concerns. ATS and NJH also commented that an examination at the CBD diagnostic center should not be required to occur within 30 days of the referral because it may take weeks or months before the CBD diagnostic center has an opening for an evaluation. However, they opposed the proposed requirement for a consultation that can be performed via telephone or virtual conferencing within 30 days of the employer receiving documentation, commenting that it would just add cost and logistics to scheduling and is not necessary (Document ID OSHA–2018–003–0022, p. 6; 0021, p. 3). DoD opposed the proposed change for a telephone or virtual consultation, arguing that an ill worker should be examined immediately (Document ID 0029, p. 2). As stated above, OSHA will consider these comments, along with any comments submitted during this rulemaking, in developing the final beryllium standards for construction and shipyards. The agency welcomes comment on these proposed revisions to paragraph (k).

Paragraph (m) Communication of Hazards

Paragraph (m) of the beryllium standards for construction and shipyards sets forth the employer's obligations to comply with OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200) relative to beryllium, and to provide warnings and training to employees about the hazards of beryllium.

In the 2017 final rule, OSHA discussed the importance of the communication of hazards provision (see 82 FR at 2724–29). The agency pointed out the need for employees to understand the hazards of beryllium exposure, the protective measures necessary to minimize potential health hazards, and the rights afforded them under these standards. OSHA also noted that the training requirements serve to explain and reinforce the information available on labels and SDSs, which are most effective when employees understand the information (82 FR at 2724). Because beryllium is a hazardous chemical with serious and debilitating health effects, it is imperative that employers ensure that employees can demonstrate that they understand the training materials and have knowledge of the topics covered during the training sessions.

OSHA intended for the hazard communication requirements in the 2017 final rule to be consistent with the HCS, while including additional specific requirements needed to protect employees exposed to beryllium to ensure that they have access to the relevant information concerning the hazards to which they are exposed. While incorporating the requirements of the HCS in the beryllium standards, OSHA further required that employers not only incorporate information about beryllium into their hazard communication programs and training but also provide training specifically on the hazards associated with beryllium on an annual basis.

OSHA is proposing three changes to paragraph (m) in both the construction and shipyard standards to align with proposed changes to other provisions in these standards. First, OSHA is proposing to remove the paragraph (m) provisions that require specific language for warning labels applied to materials designated for disposal or PPE when removed from the workplace (paragraph (m)(2) in construction and paragraph (m)(3) in shipyards).[10] This is consistent with OSHA's proposal to remove the corresponding requirements to provide such warning labels. As explained above with regard to paragraphs (h)(2)(v) and (j)(3), OSHA is proposing to remove the requirements in both standards to label PPE removed from the workplace for laundering, cleaning, maintenance, or disposal and beryllium-containing material destined for disposal. The agency is proposing these changes to reflect its intent that provisions aimed at protecting workers from the effects of dermal contact do not apply to materials containing only trace amounts of beryllium—like all beryllium-containing material used in abrasive blasting in the construction and shipyards industries—unless those workers are also exposed to airborne beryllium at or above the action level. Similarly, for the limited welding operations in shipyards, OSHA has evidence that at best only trace amounts of particulate beryllium will form (see the summary and explanation for paragraphs (h)(2)(v) and (j)(3)). Without these underlying requirements to provide labels, the provisions of paragraph (m) mandating specific language for such labels become unnecessary.

Second, OSHA is proposing to revise the provisions of paragraph (m) for employee information and training related to emergency procedures (paragraph (m)(3)(ii)(D) in construction and paragraph (m)(4)(ii)(D) in shipyards)[11] and personal hygiene practices (paragraph (m)(3)(ii)(E) in construction and paragraph (m)(4)(ii)(E) in shipyards), for consistency with OSHA's proposed removal of emergency procedures and personal hygiene practices from the construction and shipyard standards. As discussed previously with respect to paragraph (g), OSHA is proposing to remove references to emergencies in the shipyards and construction standards because OSHA expects that any emergency in these industries (such as a release resulting from a failure of the blasting control equipment, a spill of the abrasive blasting media, or the failure of the ventilation system for welding operations in shipyards) would occur only during the performance of routine tasks already associated with the airborne release of beryllium; *i.e.,* during the abrasive blasting or welding process (see the summary and explanation for paragraph (g)). As such, employees would already be protected through the use of respiratory protection from exposure in such circumstances. OSHA is also proposing to remove the hygiene provisions due to overlap with existing OSHA standards, the limited operations where beryllium exposure may occur in construction and shipyards, and the trace quantities of beryllium present in these operations (see the summary and explanation for paragraph (i)). As with the labeling requirement, the removal of these provisions renders the correlating training requirements unnecessary. OSHA requests comment on these proposed changes. OSHA specifically requests comment on the proposed removal of the requirement to train employees on personal hygiene practices and whether the agency should instead require training on the hygiene requirements of the relevant sanitation standard (29 CFR 1926.51 for construction and 29 CFR 1915.88 for shipyards).

OSHA is also proposing to revise paragraph (m)(3)(i) in construction and paragraph (m)(4)(i) in shipyards—renumbered as paragraphs (m)(2)(i) and (m)(3)(i), respectively—to remove

[10] As a result, OSHA is also proposing to renumber paragraph (m)(4) in the shipyards standard (29 CFR 1915.1024) as paragraph (m)(3), renumber paragraph (m)(3) in the construction standard (29 CFR 1926.1124) as paragraph (m)(2), and revise the references in paragraph (m)(1)(ii) of both standards accordingly.

[11] OSHA is also proposing to renumber the provisions of paragraph (m)(3)(ii) in construction and paragraph (m)(4)(ii) in shipyards to reflect the removal of this paragraph.

dermal contact as a trigger for training. Again, OSHA clarified in the 2018 DFR for general industry that it did not intend for provisions aimed at protecting workers from the effects of dermal contact to apply in the case of materials containing only trace amounts of beryllium, absent significant airborne exposures (83 FR at 19938). In the 2017 final rule, OSHA recognized that beryllium exposure in construction and shipyard industries is narrowly limited to trace quantities contained in certain abrasive blasting media and to exposure during some welding operations in shipyards (82 FR at 2690; Document ID 2042 III–66). Therefore, OSHA has preliminarily determined that training in shipyards and construction should be provided to each employee who has, or can reasonably be expected to have, airborne exposure to beryllium, without regard to dermal contact. OSHA notes that both standards already exempt materials containing less than 0.1% beryllium by weight where the employer has objective data demonstrating that employee exposure to beryllium will remain below the action level as an 8-hour TWA under any foreseeable conditions (see 29 CFR 1926.1124(a)(3) (construction) and 29 CFR 1915(a)(3) (shipyards)). Therefore, OSHA anticipates that the training requirements in proposed paragraph (m)(2) for construction and proposed paragraph (m)(3) for shipyards will continue to apply to all employees that are covered under these standards.

OSHA is also proposing to revise paragraph (m)(2)(ii)(A) in the construction standard and paragraph (m)(3)(ii)(A) in the shipyards standard to require training on the health hazards associated with ''exposure to beryllium.'' Likewise, OSHA is proposing to revise paragraph (m)(2)(ii)(D) in the construction standard and paragraph (m)(3)(ii)(D) in the shipyards standard to require training on measures employees can take to protect themselves from ''exposure to beryllium.'' OSHA intends for this phrase to encompass both airborne and skin exposure to beryllium. These revisions would resolve an inconsistency between the shipyards and construction standards with respect to references to dermal contact and would simplify these provisions.

The agency welcomes comment on these proposed revisions to paragraph (m) for the construction and shipyards sectors.

Paragraph (n) Recordkeeping

Paragraph (n) of the beryllium standards for construction and shipyards requires employers to make and maintain records of air monitoring data, objective data, medical surveillance, and training. It also requires employers to make all required records available to employees, their designated representatives, the Assistant Secretary, and the Director of NIOSH, in accordance with OSHA's records access standard, 29 CFR 1910.1020.

OSHA proposes to revise paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i) of both the construction and shipyards standards to remove requirements for workers' Social Security Numbers (SSNs) in air monitoring, medical surveillance, and training records. As promulgated in the 2017 final rule, paragraph (n)(1)(ii)(F) requires employers to include employees' SSNs in exposure measurement records. Paragraph (n)(3)(ii)(A) similarly requires SSNs in medical surveillance records. Finally, paragraph (n)(4)(i) requires SSNs in training records.

OSHA is proposing to remove the requirements for SSNs in these records in order to make the beryllium standards for shipyards and construction consistent with OSHA's other health standards. After promulgating the 2017 final rule, OSHA finalized Phase IV of its Standards Improvement Project (SIP–IV), which removed from OSHA standards all requirements for employee SSNs in employer records (84 FR 21416, 21439–40 (May 14, 2019)).[12] As OSHA explained in the SIP–IV final rule, removing requirements for SSNs results in additional flexibility for employers and allows employers to develop systems that best work for their unique situations (84 FR at 21440). OSHA also explained that the change would protect employee privacy and lower the risk of identity theft (84 FR at 21439–40).

Removing requirements for SSNs from the construction and shipyard standards, as proposed, would not require employers to delete SSNs from existing records or prohibit employers from using SSNs on records if they wish to do so. OSHA believes that compliance with the recordkeeping provisions in the proposed beryllium standards would be straightforward for construction and shipyard employers that already comply with other OSHA standards that no longer contain requirements for SSNs.

OSHA welcomes comments on its proposal to revise paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i) to remove requirements for SSNs in air monitoring, medical surveillance, and training records.

IV. Preliminary Economic Analysis

A. Introduction

This Preliminary Economic Analysis (PEA) addresses issues related to the profile of affected application groups, establishments, and employees; the cost savings and the benefits of OSHA's proposal to modify several construction and shipyard ancillary provisions. The proposal makes no changes to the 2017 final rule's TWA PEL and STEL for the shipyard and construction industries. Relative to the estimated costs in the Final Economic Analysis (2017 FEA) in support of the January 9, 2017, beryllium final rule (Document ID 2042), this NPRM would lead to total annualized cost savings of $2.5 million in 2018 dollars at a 3 percent discount rate over 10 years; at a discount rate of 7 percent over 10 years, the annualized cost savings are approximately the same at $2.5 million. When the Department uses a perpetual time horizon, the annualized cost savings of the proposal would be $2.3 million in 2016 dollars at a 7 percent discount rate.

The proposal is not an ''economically significant regulatory action'' under Executive Order 12866 or UMRA; nor, if finalized as proposed, is it a ''major rule'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Neither the benefits nor the costs of this proposal exceed $100 million. In addition, they do not meet any of the other criteria specified by UMRA for a significant regulatory action or the Congressional Review Act for a major rule.

OSHA is proposing changes to several provisions. These proposed changes are designed to accomplish three goals: (1) To more appropriately tailor the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the beryllium standards' requirements and other OSHA standards; (2) to aid compliance and enforcement across the beryllium standards by avoiding inconsistency, where appropriate, between the shipyards and construction standards and proposed revisions to the general industry standard; and (3) to clarify certain requirements with respect to

[12] Eliminating requirements to include SSNs in records is also responsive to a directive from OMB that calls for federal agencies to identify and eliminate unnecessary collection and use of SSNs in agency systems and programs (see Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, to the Heads of Executive Departments and Agencies Regarding Safeguarding Against and Responding to the Breach of Personally Identifiable Information (M–07–16), May 22, 2007 (available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2007/m07-16.pdf*)).

materials containing only trace amounts of beryllium.

This PEA provides OSHA's preliminary assessment of how this NPRM would affect the costs and benefits of complying with the various proposed beryllium provisions, including costs adjustments to reflect changes in exposure rates and baseline compliance rates. All costs are estimated in 2018 dollars. Costs reported in 2018 dollars were applied directly in this PEA; wage data were updated to 2018 dollars using BLS data (BLS, 2018a); and all other costs reported for years earlier than 2018 were updated to 2018 dollars using the GDP implicit price deflator (BEA, 2019).

This introduction to the PEA is followed by:

- *Section B:* Profile of Affected Application Groups, Establishments, and Employees.
- *Section C:* Technological Feasibility Summary.
- *Section D:* Cost Savings.
- *Section E:* Benefits.

B. Profile of Affected Application Groups, Establishments, and Employees

Introduction

In this section, OSHA presents the preliminary profile of industries affected by this proposal to modify certain ancillary provisions for the shipyard and construction sectors. The profile data in this section are drawn from the industry profiles in Chapter III and exposure profiles and data in Chapter IV of the 2017 FEA, as well as the PEA in the June 27, 2017, beryllium proposal (2017 PEA; Document ID 2076). Where this analysis discusses comments, those comments were received in response to this 2017 PEA.

In the 2017 FEA, OSHA first identified the North American Industrial Classification System (NAICS) industries, both in the shipyard and construction sectors, with potential worker exposure to beryllium. Next, OSHA provided statistical information on the affected industries, including the number of affected entities and establishments, the number of workers whose exposure to beryllium could result in disease or death (''at-risk workers''), and the average revenue and profits for affected entities and establishments by six-digit NAICS industry.[13] This information was provided for each affected industry as a whole, as well as for small entities, as defined by the Small Business Administration (SBA), and for ''very small'' entities, defined by OSHA as those with fewer than 20 employees, in each affected industry (U.S. Census Bureau, 2014). For each industry sector identified, the agency described the uses of beryllium and estimated the number of establishments and employees that potentially would be affected by this rulemaking. Employee exposure to beryllium can also occur as a result of certain processes (such as welding) that are found in many industries. This analysis will use the term ''application group'' to refer to a cross-industry group with a common process. OSHA requests comment, including data, on other potentially affected industries and occupations in the construction and shipyard sectors.

In Chapter III of the 2017 FEA, OSHA described each application group; identified the processes and occupations with beryllium exposure, including available sampling exposure measurements; and explained how OSHA estimated the number of establishments working with beryllium and the number of employees exposed to beryllium. Those estimates and the exposure profiles for abrasive blasting in construction and shipyards, and welding in shipyards,[14] are presented in this section, along with a brief description of the application groups and an explanation of the derivation of the revised exposure profiles. For additional information about these data and the application groups, please see Chapter III of the 2017 FEA.[15] Finally, this section discusses wage data, the hire rate, and current industry practices.

Affected Application Groups

OSHA's 2017 FEA identified one affected application group in the construction sector and two application groups in the shipyard sector with potential beryllium exposure. Both the shipyard and construction sectors have affected employees in the abrasive blasting application group, and the shipyard sector has affected employees in the welding application group. OSHA's understanding of the affected application groups has not changed so for a description of these application groups, please see Chapter III of the 2017 FEA and section V.B. of the 2017 construction and shipyards NPRM, the Profile of Affected Application Groups, Establishments, and Employees within the Preliminary Economic Analysis (82 FR 29189–29200). The agency requests comment on whether there are any other application groups in the construction and shipyard sectors with potential beryllium exposure.

Exposure Profile

This section summarizes the data from the 2017 FEA (see Document ID 2042, FEA Chapter IV—Technological Feasibility). It is presented here for informational purposes only. The information in this section is drawn entirely from the 2017 FEA and contains no new information.

Abrasive Blasting in Construction and Shipyards

The primary abrasive blasting job categories include the abrasive blasting operator (blaster) and pot tender (blaster's helper or assistant) during open blasting projects. Support personnel such as pot tenders or abrasive media cleanup workers might also be employed to clean up (*e.g.,* by vacuuming or sweeping) and recycle spent abrasive and to set up, dismantle, and move containment systems and supplies (NIOSH, 1976, Document ID 0779; NIOSH, 1993, 0777; NIOSH, 1995, 0773; NIOSH, 2007, 0770; Flynn and Susi, 2004, 1608; Meeker et al., 2005, 0699).

Section 15 of Chapter IV of the 2017 FEA included a detailed discussion of exposure data and analysis for the development of the exposure profile for workers in abrasive blasting operations. Because OSHA addressed general industry abrasive blasting operations in other general industry sections where appropriate, such as in the nonferrous foundries industry, the exposure profile in Section 15 addressed only exposure data from construction and shipyard tasks. The exposure profile for abrasive blasters, pot tenders/helpers, and abrasive media cleanup workers was based on two National Institute for Occupational Safety and Health (NIOSH) evaluations of beryllium exposure from abrasive blasting with coal slag, unpublished sampling results for abrasive blasting operations from four U.S. shipyards, and data submitted by the U.S. Navy (NIOSH, 1983,

[13] The Census Bureau defines an establishment as a single physical location at which business is conducted or services or industrial operations are performed. The Census Bureau defines a business firm or entity as a business organization consisting of one or more domestic establishments in the same state and industry that are specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a state will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments. (U.S. Census Bureau, Statistics of U.S. Businesses, Glossary, 2017, *https://www.census.gov/programs-surveys/susb/about/glossary.html* (Accessed March 3, 2017)).

[14] The exposure profile used for welding in shipyards in this PEA, and in the 2017 PEA, differs from the exposure profile used in Chapter III the 2017 FEA because OSHA is now using maritime-specific data pulled from the appendices to Chapter IV of the 2017 FEA. See 82 FR 29195.

[15] OSHA contractor Eastern Research Group (ERG) provided support for the 2017 FEA.

Document ID 0696; NIOSH, 2007, 0770; OSHA, 2005, 1166; U.S. Navy, 2003, 0145).

Welding in Shipyards

Similar to the profile for abrasive blasting activities, OSHA used exposure data from the 2017 FEA to develop the exposure profile for welding in shipyards. OSHA used the exposure data from Chapter IV–10 Appendices 2 and 3 and combined the aluminum base metal and non-aluminum or unknown base material data. OSHA removed shorter duration samples that appeared in Appendix 3 of FEA chapter IV–10. Seven maritime welding samples from Appendix 3, Table IV–10.6 with sampling durations of 240 minutes or greater were used in this profile to represent the 8-hour TWA samples.

Compared to Chapter III of the 2017 FEA, this caused a change in the exposure profile for welders in shipyards. The exposure profile for welding in shipyards is based on data presented in appendices 2 and 3 of Section 10.6 of Chapter IV, and again is more fully summarized in Section IV of the 2017 PEA. Those data measure exposures of shipyard-based welders, and OSHA has preliminarily determined that it is a more suitable data set on which to base the exposure profile of welders in shipyards than the data used in the 2017 FEA, which were based on general industry welding exposures.

Tables IV–1 and IV–2 summarize, from the exposure profiles, the number of workers at risk of beryllium exposure and the distribution of 8-hour TWA beryllium exposures by affected application group and job category. Exposures are grouped into ranges (*e.g.,* > 0.05 μg/m³ and < 0.1 μg/m³) to show the percentages of employees in each job category and sector exposed at levels within the indicated range.

Table IV–3 presents data by NAICS code on the estimated number of workers at risk of beryllium exposure for each of the same exposure ranges, based on the exposure profile data and the estimated number of workers in each job category and application group. As shown, an estimated 2,168 workers have beryllium exposures above the TWA PEL of 0.2 μg/m³.

TABLE IV–1—DISTRIBUTION OF BERYLLIUM EXPOSURES BY APPLICATION GROUP AND JOB CATEGORY OR ACTIVITY

Job category/activity	Exposure level (μg/m³)								
	0 to ≤0.05 (%)	>0.05 to ≤0.1 (%)	>0.1 to ≤0.2 (%)	>0.2 to ≤0.25 (%)	>0.25 to ≤0.5 (%)	>0.5 to ≤1.0 (%)	>1.0 to ≤2.0 (%)	>2.0 (%)	Total (%)
Abrasive Blasting—Construction									
Abrasive Blaster	15.2	15.2	25.7	2.5	12.4	4.7	5.4	18.9	100.0
Pot Tender	28.1	28.1	43.8	0.0	0.0	0.0	0.0	0.0	100.0
Cleanup	33.3	33.3	26.7	0.0	0.0	0.0	3.3	3.3	100.0
Abrasive Blasting—Shipyards									
Abrasive Blaster	15.2	15.2	25.7	2.5	12.4	4.7	5.4	18.9	100.0
Pot Tender	28.1	28.1	43.8	0.0	0.0	0.0	0.0	0.0	100.0
Cleanup	33.3	33.3	26.7	0.0	0.0	0.0	3.3	3.3	100.0
Welding—Shipyards									
Welder	47.4	47.4	1.5	0.0	0.0	3.0	0.7	0.0	100.0

Note: Data may not sum to totals due to rounding.
[a] The lowest exposure range in OSHA's technological feasibility analysis is ≤0.1 μg/m³ (see Chapter IV–02, Limits of Detection for Beryllium Data, in the 2017 FEA (Document ID 2042) in support of the new beryllium standards). Because OSHA lacked information on the distribution of worker exposures in this range, the agency evenly divided the workforce exposed at or below 0.1 μg/m³ into the two categories shown in this table and in the columns with identical headers in Tables IV–2 and IV–3 of this PEA. OSHA recognizes that this simplifying assumption may overestimate exposure in these lower exposure ranges.
* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.
** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.
Source: Table V–7, 2017 beryllium proposal (82 FR at 29195).

TABLE IV–2—NUMBER OF WORKERS EXPOSED TO BERYLLIUM BY AFFECTED APPLICATION GROUP, JOB CATEGORY, AND EXPOSURE RANGE (mg/m³)

Application group/job category	Exposure level (μg/m³)								
	0 to ≤0.05 (%)	>0.05 to ≤0.1 (%)	>0.1 to ≤0.2 (%)	>0.2 to ≤0.25 (%)	>0.25 to ≤0.5 (%)	>0.5 to ≤1.0 (%)	>1.0 to ≤2.0 (%)	>2.0 (%)	Total (%)
Abrasive Blasting—Construction									
Abrasive Blaster	511	511	863	83	416	159	182	636	3,360
Pot Tender	945	945	1,470	0	0	0	0	0	3,360
Cleanup	560	560	448	0	0	0	56	56	1,680
Abrasive Blasting—Shipyards									
Abrasive Blaster	186	186	314	30	152	58	66	232	1,224
Pot Tender	344	344	536	0	0	0	0	0	1,224
Cleanup	204	204	163	0	0	0	20	20	612
Welding—Shipyards									
Welder	13	13	1	0	0	1	1	0	26
Total									
Construction Subtotal	2,016	2,016	2,781	83	416	159	238	692	8,400
Maritime Subtotal	747	747	1,013	30	152	59	87	252	3,086
Total, All Industries	2,763	2,763	3,794	114	568	218	324	944	11,486

Note: Data may not sum to totals due to rounding. Figures with actual values representing less than one person have been rounded up to one (person).
* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.
** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.
Source: Table V–8, 2017 beryllium proposal (82 FR at 29196).

TABLE IV–3—NUMBER OF WORKERS EXPOSED TO BERYLLIUM BY AFFECTED INDUSTRY AND EXPOSURE LEVEL (mg/m³)

Application group/ NAICS	Industry	Exposure level (μg/m³)								
		0 to ≤0.05 (%)	>0.05 to ≤0.1 (%)	>0.1 to ≤0.2 (%)	>0.2 to ≤0.25 (%)	>0.25 to ≤0.5 (%)	>0.5 to ≤1.0 (%)	>1.0 to ≤2.0 (%)	>2.0 (%)	Total (%)
Abrasive Blasting—Construction										
238320	Painting and Wall Covering Contractors.	1,046	1,046	1,443	43	216	82	123	359	4,360
238990	All Other Specialty Trade Contractors.	970	970	1,337	40	200	76	114	333	4,040
Abrasive Blasting—Shipyards										
336611a	Ship Building and Repairing.	734	734	1,013	30	152	58	87	252	3,060
Welding in Shipyards										
336611b	Ship Building and Repairing.	13	13	1	0	0	1	1	0	26
Total										
Construction Subtotal		2,016	2,016	2,781	83	416	159	238	692	8,400
Maritime Subtotal		747	747	1,013	30	152	59	87	252	3,086
Total, All Industries		2,763	2,763	3,794	114	568	218	324	944	11,486

Note: Data may not sum to totals due to rounding. Figures with actual values representing less than one person have been rounded up to one (person).
* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.
** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.
Source: Table V–9, 2017 beryllium proposal (82 FR at 29196).

Summary of Affected Establishments and Employers

As shown in Table IV–4, OSHA estimates that a total of 11,486 workers in 2,796 establishments will be affected by this proposal. Also shown are the estimated annual revenues for these entities. Table IV–5 presents the agency's preliminary estimate of affected entities defined as small by SBA, and Table IV–6 presents OSHA's preliminary estimate of affected establishments and employees by NAICS industries for the subset of small entities with fewer than 20 employees.[16] For the tables showing the characteristics of small and very small entities, OSHA generally assumed that beryllium-using small entities and very small entities would be the same proportion of overall small and very small entities as the proportion of beryllium-using entities to all entities as a whole in a NAICS industry. OSHA in the 2017 PEA requested public comment on the profile data presented in Tables IV–4, IV–5, and IV–6, and received none. OSHA continues to welcome comment on the number of affected establishments, entities, and employers.

TABLE IV–4—CHARACTERISTICS OF INDUSTRIES AFFECTED BY OSHA'S PROPOSED DEREGULATORY ACTION FOR BERYLLIUM—ALL ENTITIES

NAICS code	Industry	Total entities [a]	Total establishments [a]	Total employees [a]	Affected entities [b]	Affected establishments [b]	Affected employees [b]	Total revenues ($1,000) [a]	Revenues /entity [a]	Revenues /establishment [a]
Abrasive Blasting—Construction										
238320	Painting and Wall Covering Contractors.	31,317	31,376	163,073	1,088	1,090	4,360	$19,595,278	$625,707	$624,531
238990	All Other Specialty Trade Contractors.	28,734	29,072	193,631	998	1,010	4,040	39,396,242	1,371,067	1,355,127
Abrasive Blasting—Shipyards										
336611a	Ship Building and Repairing.	604	689	108,311	604	689	3,060	26,136,187	43,271,832	37,933,508
Welding in Shipyards										
336611b	Ship Building and Repairing.	604	689	108,311	6	7	26	26,136,187	43,271,832	37,933,508
Total										
Construction Subtotal		60,051	60,448	356,704	2,086	2,100	8,400	58,991,520	982,357	975,905

[16] Tables IV–5 and IV–6 indicate that small entities affected by the proposed rule contain 2,714 affected establishments affiliated with entities that are small by SBA standards and 2,365 affected establishments affiliated with entities that employ fewer than 20 employees. However, the small and very small entity figures in Tables IV–5 and IV–6 were not used to prepare the cost savings estimates in Section D of this PEA. For costing purposes in Section D, OSHA included small establishments owned by larger entities versus the figures in Tables IV–5 and IV–6 because such establishments do not qualify as ''small entities'' for the purposes of a Regulatory Flexibility Analysis. To see the difference in the number of affected establishments by size for costing purposes, consider the example of a ''large entity'' with 500 employees, consisting of 50 ten-employee establishments. In Section B., each of these 50 establishments would be excluded from Tables IV–5 and IV–6 because they are part of a ''large entity''; in Section D., where all establishments are included because there is no filter for entity size, each would be considered a small establishment.

Thus, for purposes of Section D., there are 2,399 affected establishments with fewer than 20 employees, 369 affected establishments with between 20 and 499 employees, and 28 establishments with more than 500 employees. Census (2015) Statistics of US Businesses data suggest there are also a total of 3,464 establishments affiliated with entities in construction and shipyards employing between 20 and 499 employees, of which approximately 157 would be affected by the rule.

TABLE IV–4—CHARACTERISTICS OF INDUSTRIES AFFECTED BY OSHA'S PROPOSED DEREGULATORY ACTION FOR BERYLLIUM—ALL ENTITIES—Continued

NAICS code	Industry	Total entities [a]	Total establishments [a]	Total employees [a]	Affected entities [b]	Affected establishments [b]	Affected employees [b]	Total revenues ($1,000) [a]	Revenues /entity [a]	Revenues /establishment [a]
Maritime Subtotal		604	689	108,311	610	696	3,086	26,136,187	43,271,832	37,933,508
Total, All Industries		60,655	61,137	465,015	2,696	2,796	11,486	85,127,707	1,403,474	1,392,409

[a] Data may not sum to totals due to rounding. [a] U.S. Census Bureau, Statistics of U.S. Businesses: 2012 (Document ID 2034).
[b] OSHA estimates of employees potentially exposed to beryllium and associated entities and establishments. Affected entities and establishments constrained to be less than or equal to the number of affected employees.
Source: Table V–4, 2017 beryllium proposal (82 FR at 29192).

TABLE IV–5—CHARACTERISTICS OF CONSTRUCTION AND SHIPYARD INDUSTRIES AFFECTED BY OSHA'S PROPOSED ACTION FOR BERYLLIUM—SMALL ENTITIES

NAICS code	Industry	SBA small business classification (employees) [a]	Small business entities [b]	Establishments for small entities [b]	Small entity employees [b]	Affected small business entities [c]	Affected small establishments [c]	Affected employees for small entities [c]	Total revenues for small entities ($1,000) [b]	Revenues/ small entity	Revenues/small establishment
Abrasive Blasting—Construction											
238320	Painting and Wall Covering Contractors.	100	31,221	31,243	133,864	1,085	1,085	3,579	$16,552,251	$530,164	$529,791
238990	All Other Specialty Trade Contractors.	100	28,537	28,605	143,112	991	994	2,986	29,789,492	1,043,890	1,041,409
Abrasive Blasting—Shipyards											
336611a	Ship Building and Repairing	1,250	585	629	27,170	585	629	768	6,043,893	10,331,440	9,608,732
Welding in Shipyards											
336611b	Ship Building and Repairing	1,250	585	629	27,170	6	6	7	6,043,893	10,331,440	9,608,732
Total											
Construction Subtotal			59,758	59,848	276,976	2,076	2,079	6,565	46,341,743	775,490	774,324
Maritime Subtotal			585	629	27,170	591	635	775	6,043,893	10,331,440	9,608,732
Total, All Industries			60,343	60,477	304,146	2,667	2,714	7,340	52,385,636	868,131	866,208

Data may not sum to totals due to rounding.
[a] SBA Size Standards, 2016.
[b] U.S. Census Bureau, Statistics of U.S. Businesses: 2012 (Document ID 2034).
[c] OSHA estimates of employees potentially exposed to beryllium and associated entities and establishments. Affected entities and establishments constrained to be less than or equal to the number of affected employees.
Source: Table V–5, 2017 beryllium proposal (82 FR at 29194).

TABLE IV–6—CHARACTERISTICS OF INDUSTRIES AFFECTED BY OSHA'S PROPOSED DEREGULATORY ACTION FOR BERYLLIUM—ENTITIES WITH FEWER THAN 20 EMPLOYEES

Application group	NAICS	Industry	Entities with <20 employees [a]	Establishments for entities with <20 employees [a]	Employees for entities with <20 employees [a]	Affected entities with <20 employees [b]	Affected establishments for entities with <20 employees [b]	Affected employees for entities with <20 employees [b]	Total revenues for entities with <20 employees ($1,000) [a]	Revenues per entity with <20 employees	Revenue per estab. for entities with <20 Employees
Abrasive Blasting—Construction											
Abrasive Blasting—Construction	238320	Painting and Wall Covering Contractors	29,953	29,957	87,984	1,041	1,041	2,352	$10,632,006	$354,956	$354,909
Abrasive Blasting—Construction	238990	All Other Specialty Trade Contractors	27,026	27,041	90,82	939	939	1,895	19,232,052	711,613	711,218
Abrasive Blasting—Shipyards*											
Abrasive Blasting—Shipyards	336611a	Ship Building and Repairing	380	381	2,215	380	381	381	547,749	1,441,445	1,437,661
Welding in Shipyards**											
Welding in Shipyards	336611b	Ship Building and Repairing	380	381	2,215	4	4	4	547,749	1,441,445	1,437,661
Total											
Construction Subtotal			56,979	56,998	178,806	1,980	1,980	4,247	29,864,058	524,124	523,949
Shipyards Subtotal			380	381	2,215	384	385	385	547,749	1,441,445	1,437,661
Total, All Industries			57,359	57,379	181,021	2,364	2,365	4,632	30,411,807	530,201	530,016

Data may not sum to totals due to rounding.
[a] U.S. Census Bureau, Statistics of U.S. Businesses: 2012 (Document ID 2034).
[b] OSHA estimates of employees potentially exposed to beryllium and associated entities and establishments. Affected entities and establishments constrained to be less than or equal to the number of affected employees.
* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.
** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.
Source: Table V–6, 2017 beryllium proposal (82 FR at 29195).

Loaded Wages and New Hire Rate

For this PEA, OSHA updated the 2017 PEA wage estimates from 2016 to 2018 levels using data for base wages by Standard Occupational Classification (SOC) from the March 2018 Occupational Employment Statistics survey of the Bureau of Labor Statistics. OSHA applied a fringe markup (loading factor) of 46.6 percent of base wages (BLS, 2018b, Document ID 2186);[17] loaded hourly wages by application group and SOC are shown in Table IV–7. OSHA also updated the new hire rate for manufacturing from its 2017 PEA estimate of 25.7 percent to a final estimate of 34.7 percent (BLS, 2018c, Document ID 2173). The agency applied the updated rate (34.7 percent) in this preliminary profile and requests public comment on the preliminary wage and hire rates shown in Table IV–7.

Baseline Industry Practices and Existing Regulatory Requirements (''Current Compliance'') on Hazard Controls and Ancillary Provisions

Table IV–8 reflects OSHA's estimate of baseline industry compliance rates, by application group and job category, for each of the ancillary provisions that, under the 2017 final rule, would affect the establishments that are subject to this preliminary deregulatory action. See Chapter III of the 2017 FEA for additional discussion of the current baseline compliance rates for each provision, which were estimated based on site visits, industry contacts, published literature, and the Final Report of the Small Business Advocacy Review (SBAR) Panel (SBAR, 2008, Document ID 0345). Note that the compliance rate is typically the same for all jobs in a given sector.

In the 2017 FEA, OSHA estimated that abrasive blasters in construction and shipyards had a 75 percent compliance rate with the PPE requirements in the beryllium standards. The 2017 PEA revised those estimates to 100 percent compliance based on the belief that 29 CFR 1926.57(f)(5)(v) already required abrasive blasting operators to wear full PPE, including respirators, gloves, safety shoes, and eye protection; that 29 CFR 1915.34(c)(3) required full PPE for abrasive blaster operators performing mechanical paint removal in shipyards; and that 29 CFR 1915.157(a) required welders in shipyards to wear gloves. (82 FR 29197). Some commenters disagreed with this estimate for abrasive blasting operations. NABTU noted that ''with the exception of abrasive blasting operators wearing type CE respirators, construction workers' use of PPE during abrasive blasting operations is extremely limited.'' (Document ID 2129, p. 11). BHSC also expressed concern about the degree of protection afforded by the other OSHA standards to workers near abrasive blasting operations, stating that the estimated 100 percent PPE use for those workers ''does not have supporting evidence of consistent and standard use across pot tenders and cleanup activities supporting abrasive blasting'' (Document ID 2118, p. 5).

While the agency acknowledges these comments claiming that its revised 100 percent compliance estimate was too high for abrasive blasting operations, OSHA is also proposing to remove dermal contact with beryllium as a trigger for PPE requirements. This clarifies and limits the activities that would trigger PPE requirements under this proposal, making a higher baseline compliance estimate more appropriate. The agency has preliminarily determined that a better estimate for PPE for abrasive blasting operations is in between the two previous estimates of 75 percent and 100 percent. OSHA preliminarily estimates 90% compliance for PPE for areas where exposures exceed, or can reasonably be expected to exceed, the TWA PEL or STEL, which are the only areas in which the standards would require PPE under the proposed revisions. For welders in shipyards, OSHA estimated a 0% compliance rate in the 2017 FEA and revised that estimate in the 2017 PEA because gloves are required under 29 CFR 1915.157(a) to protect workers from hazards faced by welders, such as thermal burns. OSHA continues to estimate a 100% PPE compliance rate for welders in shipyards in areas where exposures can exceed the TWA PEL or STEL because of the overlap with 29 CFR 1915.157(a).[18]

In the 2017 FEA, for the three occupational groups involved in abrasive blasting (operators, pot-tenders, and clean-up workers), OSHA estimated a 75% compliance rate with respirators that met the beryllium standards' requirements. In the 2017 PEA, operators, but not pot-tenders or clean-up workers, were revised to 100% compliance due to the strict existing standards for operators (see §§ 1926.57(f) and 1915.34(c)(3)(iv)). This PEA continues to use these baseline compliance estimates of 100% for operators and 75% for pot tenders and clean-up workers. For welders in shipyards, the 2017 FEA estimated 0% compliance with proper respirator use and a 25% compliance rate with the requirement to establish a respiratory protection program. OSHA is revising this estimate to 100% in this PEA because in shipyards, other standards addressing respiratory protection include the Mechanical Paint Removers standard (29 CFR 1915.34(c)(3)), the Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment standards (29 CFR 1915.12(c)(4)(ii)), the Welding, Cutting, and Heating standards for shipyards (29 CFR 1915.51(d)(2)(iv)), as well as the general Respiratory Protection standards (29 CFR 1910.134, 1915.154).

The baseline compliance rates for the housekeeping provisions in the 2017 FEA were 0% for welders in shipyards and 75% for blasters, pot tenders, and clean-up workers in abrasive blasting in both construction and shipyards. In the 2017 PEA, OSHA reviewed existing housekeeping requirements and updated the estimate from 75% to 100% for abrasive blasting operations because some housekeeping is required by existing standards for abrasive blasting operations in construction and shipyards. The Summary and Explanation for housekeeping for this NPRM discusses the agency's preliminary finding that existing standards cover general housekeeping requirements for blasters, pot tenders, and clean-up workers, though these other standards allow some cleaning methods that the beryllium standards, and the proposed revisions, limit, like dry sweeping or brushing and compressed air. Under this proposal, housekeeping requirements would no longer apply when dust from trace amounts of beryllium could not be expected to cause airborne exposures above the TWA PEL and STEL. Hence, these requirements are estimated to only affect areas where workers are exposed above the TWA PEL or STEL in the exposure profile. While the proposed revisions will limit the methods that employers may use to clean up beryllium, OSHA estimates that cleaning methods that do not disperse

[17] A fringe markup (loading factor) of 46.6 percent was calculated in the following way. Employer costs for employee compensation for civilian workers averaged $36.32 per hour worked in March 2018. Wages and salaries averaged $24.77 per hour worked and accounted for 68.2 percent of these costs, while benefits averaged $11.55 and accounted for the remaining 31.8 percent. Therefore, the fringe markup (loading factor) is $11.55/$24.77, or 45.6 percent. Total employer compensation costs for private industry workers averaged $34.17 per hour worked in March 2018 (BLS, 2018b, Document ID 2186).

[18] In fact, the 0 percent baseline compliance rate for PPE in shipyard welding in the 2017 FEA was simply a mistake insofar as baseline compliance rate for PPE for welding in general industry was 100 percent in the same document. 2017 FEA, Ch. III, p. III–188.

beryllium into the air take approximately the same amount of time as cleaning methods already in use. For abrasive blasting operations, the agency therefore maintains from the 2017 PEA its 100% compliance rate for housekeeping for abrasive blasting operations. OSHA requests comment on the compliance rate with the proposed housekeeping provisions in the abrasive blasting industries in construction and shipyards.

For welders in shipyards, OSHA estimated a 0% compliance rate for housekeeping in both the 2017 FEA and the 2017 PEA. As explained in the Summary and Explanation, OSHA has reason to believe that skin or surface contamination is not an exposure source of concern in welding in shipyards. The proposed revisions would also limit the circumstances in which housekeeping is required. OSHA therefore estimates that in welding in shipyards, employers will not have to engage in additional housekeeping to comply with the proposed revisions and is revising its baseline compliance estimate for housekeeping to 100% for welding in shipyards.

In the 2017 PEA, OSHA treated the compliance rates for vacuums, bags, and labels separately from the labor costs of housekeeping. OSHA estimated a 0% compliance rate for all industries in construction and shipyards for vacuums, bags, and labels because it believed the cost of such equipment was not covered by other standards. In this PEA, OSHA is setting the compliance rates under housekeeping for vacuums, bags, and labels to 100% as this proposal removes those requirements from the standard.

The baseline compliance rates for the hygiene areas provisions in the 2017 FEA were 0% for welders in shipyards and 75% for blasters, pot tenders, and clean-up workers in abrasive blasting in both construction and shipyards. As explained in the Summary and Explanation section of this preamble, OSHA is proposing to remove paragraph (i), Hygiene areas, from the construction and shipyards standards. The standards as modified by this proposal therefore no longer require employers to comply with any hygiene-related provisions, and the baseline compliance is revised to 100% to demonstrate that there will be no cost associated with hygiene areas under the proposal.

The baseline compliance rate for each of the remaining provisions was unchanged from the 2017 FEA to the 2017 PEA and remains unchanged in this PEA. OSHA welcomes comments on the baseline compliance estimates shown in Table IV–8, particularly with respect to PPE and housekeeping.

As a final point on baseline industry practices, OSHA acknowledges the possibility of a future decline in the use of coal slag abrasive materials and welcomes comment and information on this issue. To the extent that coal slag abrasives are being replaced, for reasons unrelated to the implementation of this standard, by other blasting materials that do not have the potential for beryllium exposures of concern, the costs and benefits of compliance with the TWA PEL for abrasive blasting operations would also decrease.

TABLE IV–7—LOADED HOURLY WAGES AND HIRE RATE FOR OCCUPATIONS (JOBS) EXPOSED TO BERYLLIUM AND AFFECTED BY OSHA'S PROPOSED BERYLLIUM STANDARD

Provision in the standard	Job	NAICS	SOC [a]	Occupation	Median hourly wage	Fringe mark-up percentage, total [b]	Loaded hourly (or daily [d]) wage
Monitoring [c]	Industrial Hygienist Consultant.	N/A	N/A	N/A	N/A	N/A	$172.28
Monitoring [d]	IH Technician—Initial						[d] 2,759.73
IH Technician—Additional and Periodic.							1,379.86
Regulated Area/Job Briefing [e].	Production Worker	31–33	51–0000	Production Occupations	$17.37	46.6	25.47
Medical Surveillance [e]	Human Resources Manager	31–33	11–3121	Human Resources Managers.	53.38	46.6%	78.27
Exposure Control Plan, Medical Surveillance, and Medical Removal [e].	Clerical	31–33	43–4071	File Clerks	16.85	46.6	24.71
Training [e]	Training Instructor	31–33	13–1151	Training and Development Specialists.	28.99	46.6	42.51
Medical Surveillance [e]	Physician (Employers' Physician).	31–33	29–1062	Family and General Practitioners.	88.95	46.6	130.43
Multiple Provisions [f]	First Line Supervisor	Various	51–1011	First-Line Supervisors of Production and Operating Workers.	29.59	46.6	43.39

Sources: U.S. Dept. of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis (OSHA, 2019).
[a] 2010 Standard Occupational Classification System. Bureau of Labor Statistics. *http://www.bls.gov/soc/classification.htm.*
[b] BLS, 2018b. 46.6 percent represents fringe as a percentage of base wages. BLS-reported data for fringe as a percentage of total compensation is 31.8 percent.
[c] ERG estimates based on discussions with affected industries, and inflated to 2018 Dollars.
[d] Wages used in the economic analysis for the Silica final rule, inflated to 2018 Dollars.
[e] BLS, 2018a.
[f] BLS, 2018a; Weighted average for SOC 51–1011 in NAICS 313000, 314000, 315000, 316000, 321000, 322000, 323000, 324000, 325000, 326000, 327000, 335000, 336000, 337000, and 339000.

TABLE IV–8—ESTIMATED CURRENT COMPLIANCE RATES FOR INDUSTRY SECTORS AFFECTED BY OSHA'S PROPOSED BERYLLIUM STANDARD

Application group	Job	Exposure assessment (%)	Regulated areas/ competent person (%)	Medical surveillance	Medical removal program (%)	Exposure control plan (%)	PPE (%)	Hygiene		Training	Respirators		Housekeeping	
								Employees (%)	Establishments (%)		Employee/ respirator (%)	Establishment/ respirator program (%)	Labor (%)	Vacuum, bags, labels (%)
Abrasive Blasting—Construction														
Abrasive Blasting—Construction.	Abrasive Blaster	0	75	75	0	75	90	100	100	75	100	100	100	100
Abrasive Blasting—Construction.	Pot Tender	0	75	75	0	75	90	100	100	75	75	75	100	100
Abrasive Blasting—Construction.	Cleanup	0	75	75	0	75	90	100	100	75	75	75	100	100
Abrasive Blasting—Shipyards														
Abrasive Blasting—Shipyards.	Abrasive Blaster	0	75	75	0	75	90	100	100	75	100	100	100	100
Abrasive Blasting—Shipyards.	Pot Tender	0	75	75	0	75	90	100	100	75	75	75	100	100
Abrasive Blasting—Shipyards.	Cleanup	0	75	75	0	75	90	100	100	75	75	75	100	100
Welding—Shipyards														
Welding—Shipyards ..	Welder	0	0	0	0	0	100	100	100	0	100	100	100	100

Source: U.S. Dept. of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis (OSHA, 2019).

[a] Estimated compliance rates for medical surveillance do not include medical referrals. OSHA estimates that baseline compliance rates for medical referrals are zero percent for all application groups shown in the table.

* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasive to etch the surfaces of boats and ships.

** Employers in application group Welding—Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.

C. Technological Feasibility Summary

This section summarizes OSHA's technological feasibility findings made in the 2017 FEA (see Document ID 2042, FEA Chapter IV—Technological Feasibility). It is presented here for informational purposes only. The information in this section is drawn entirely from the 2017 FEA and contains no new information or assessment.

Overall, based on the information discussed in Chapter IV of the 2017 FEA, OSHA determined that the majority of the exposures in construction and shipyards are either already at or below the new final PEL, or can be adequately controlled to levels below the final PEL through the implementation of additional engineering and work practice controls for most operations most of the time. The one exception is that OSHA determined that workers who perform open-air abrasive blasting using mineral grit (*i.e.,* coal slag) will routinely be exposed to levels above the final PEL even after the installation of feasible engineering and work practice controls, and therefore, these workers will also be required to wear respiratory protection. Therefore, OSHA concluded in the January 9, 2017 final rule that the final PEL of 0.2 $\mu g/m^3$ is technologically feasible in abrasive blasting in construction and shipyards and in welding in shipyards.

D. Costs of Compliance

Introduction

Throughout this section, OSHA presents cost-saving formulas in the text, usually in parentheses, to help explain the derivation of cost-saving estimates for the individual provisions. Because the values used in the formulas shown in the text are shown only to the second decimal place, while the spreadsheets supporting the text are not limited to two decimal places, the calculation using the presented formula will sometimes differ slightly from the totals presented in the tables.

These estimates of cost savings are largely based on the cost estimates presented for Regulatory Alternative 2a in the preamble for the 2017 final rule (82 FR at 2470, 2612–2615), which were in turn derived from the Costs of Compliance chapter (Chapter V) of the 2017 FEA. OSHA has retained the same calculation methods from the 2017 FEA, detailed in Chapter V of that document, and has updated all wages and unit costs to 2018 dollars. All cost savings in this PEA similarly are expressed in 2018 dollars and were annualized using discount rates of 3 percent and 7 percent, as required by OMB.[19] Unit costs developed in this section were multiplied by the number of workers who would have to comply with the provisions, as identified in Section B of this PEA (Profile of Affected Application Groups, Establishments, and Employees). The estimated number of affected workers depends on what level of exposure triggers a particular provision and the percentage of those workers already in compliance. In a few cases, costs were calculated based on the number of firms. As in the 2017 FEA, OSHA is estimating that the beryllium standards will reduce the number of workers exposed to beryllium over the PEL by 90 percent. Therefore, for ancillary provisions that require employers to take action for employees who continue to be exposed over the PEL, like respiratory protection and PPE, OSHA estimates the cost based on ten percent of the number of employees exposed over the PEL in the exposure profiles.

For purposes of calculating costs, OSHA assumes a 250-day work year. This is a standard calculation that OSHA and others use, which assumes employees work 5 days a week with 2 weeks of vacation, resulting in 250 work days per year (50 weeks $\times$ 5 work days a week). OSHA requests comment on the appropriateness of this estimate for both the construction and shipyard industries.

Estimated compliance rates are presented in Table IV–8 in Section B of this preamble. The estimated costs for this beryllium proposal represent the additional costs necessary for employers to achieve full compliance with the proposed rule. The costs of complying with the beryllium proposal's program requirements therefore depend on the extent to which employers in affected application groups have already undertaken some of the required actions. A discussion of affected workers is presented in Section B of this PEA. Complete calculations are available in the OSHA spreadsheet in support of this PEA (OSHA, 2019). Annualization periods for expenditures on equipment are based on equipment life, and one-time costs are annualized over a 10-year period.[20] The agency first presents costs for the full 2017 final rule with only updated wages, unit costs, and hiring rates based on 2018 data. All other estimates (compliance rates, exposure profile, etc.) are the same as the 2017 FEA. This is the baseline from which all cost savings of the proposal are benchmarked.

Table IV–9 shows these costs, which total for all occupations in construction and shipyards to $12.7 million at a discount rate of 3 percent, an increase of 3% from the equivalent cost for the 2017 FEA ($12.3 million).

[19] See OMB Memo M–17–21 (April 5, 2017). OSHA included the 3 percent rate in its primary analysis, but Appendix IV–A of this PEA also presents costs by NAICS industry and establishment size categories using, as alternatives, a 7 percent discount rate—shown in Table IV–21—and a 0 percent discount rate—shown in Table IV–22.

[20] Executive Order 13563 directs agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In addition, OMB Circular A–4 suggests that analysis should include all future costs and benefits using a ''rule of reason'' to consider for how long it can reasonably predict the future and limit its analysis to this time period. Annualization should not be confused with depreciation or amortization for tax purposes. Annualization spreads costs out evenly over the time period (similar to the payments on a mortgage) to facilitate comparison of costs and benefits across different years. In cases where costs occur on an annual basis, but do not change between years, annualization is not necessary, and OSHA may refer simply to ''annual'' costs.

TABLE IV–9—TOTAL ANNUALIZED COSTS OF FULL 2017 FINAL BERYLLIUM RULE, BY SECTOR AND SIX-DIGIT NAICS INDUSTRY; RESULTS SHOWN BY SIZE CATEGORY

[3 Percent Discount Rate, 2018 Dollars]

Application group/NAICS	Industry	All establishments	Small entities (SBA-defined)	Very small entities (<20 employees)
Abrasive Blasting—Construction				
238320	Painting and Wall Covering Contractors	$4,704,939	$3,962,355	$2,775,400
238990	All Other Specialty Trade Contractors	4,360,056	3,352,464	2,288,751
Abrasive Blasting—Shipyards				
336611a	Ship Building and Repairing	3,531,117	1,131,837	593,268
Welding in Shipyards				
336611b	Ship Building and Repairing	74,259	21,743	12,163
Total				
Construction Subtotal		9,064,995	7,314,819	5,064,151
Maritime Subtotal		3,605,376	1,153,580	605,431
Total, All Industries		12,670,371	8,468,399	5,669,582

Notes: Figures in rows may not add to totals due to rounding.
Source: U.S. DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

To estimate the cost savings of the proposal, OSHA estimated the difference between the costs of the 2017 final rule (with updated wages, prices, and hiring rate), Table IV–9, and the costs of this proposal. These cost savings are presented and discussed below. Table IV–10 shows first, by affected application group and six-digit NAICS code, annualized cost savings for all establishments, for all small entities (as defined by the Small Business Act and SBA's implementing regulations; see 15 U.S.C. 632 and 13 CFR 121.201), and for all very small entities (defined by OSHA as those with fewer than 20 employees). OSHA estimates that this proposal would yield a total annualized cost savings of $2.5 million using a 3 percent discount rate across the shipyard and construction sectors.

The agency notes that it did not include an overhead labor cost either in the 2017 FEA in support of the January 9, 2017 final standards, the 2017 PEA, or in this PEA. There is not one broadly accepted overhead rate, and the use of overhead to estimate the marginal costs of labor raises a number of issues that should be address before being applying overhead costs to analyze the costs of any specific regulation. There are several approaches to look at the cost elements that fit the definition of overhead, and there are a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,[21] and government contractors have reportedly used an average 50 percent for on-site (*i.e.,* company site) overhead.[22] Some overhead costs, such as advertising and marketing, vary with output rather than with labor costs. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of one employee in a 500-employee firm, but those costs may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees' duties to implement a rule, then the marginal share of overhead costs such as rent, insurance, and major office equipment (*e.g.,* computers, printers, copiers) would be very difficult to measure with accuracy.

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, the cost savings of this proposal would increase by approximately $237,000 per year, or approximately 10 percent above the primary estimate of cost savings.

[21] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002 (document ID 2025). This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule, Prepared for the Chemical Manufacturers Association, December 14, 1989.

[22] For a further example of overhead cost estimates, please see the Employee Benefits Security Administration's guidance at Grant Thornton LLP, *2017 Government Contractor Survey, https://www.grantthornton.com/-/media/content-page-files/public-sector/pdfs/surveys/2018/2017-government-contractor-survey.* According to Grant Thornton's *2017 Government Contractor Survey,* on-site rates are generally higher than off-site rates, because the on-site overhead pool includes the facility-related expenses incurred by the company to house the employee, while no such expenses are incurred or allocated to the labor costs of direct charging personnel who work at the customer site. For further examples of overhead cost estimates, please see the Employee Benefits Security Administration's guidance at *https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-july-2017.pdf.*

TABLE IV–10—TOTAL ANNUALIZED COST SAVINGS, BY SECTOR AND SIX-DIGIT NAICS INDUSTRY, FOR ENTITIES AFFECTED BY THE SHIPYARD AND CONSTRUCTION BERYLLIUM STANDARDS (BY SIZE CATEGORY, 3 PERCENT DISCOUNT RATE, 2018 DOLLARS)

Application group/NAICS	Industry	All establishments	Small entities (SBA-defined)	Very small entities (<20 Employees)
Abrasive Blasting—Construction				
238320	Painting and Wall Covering Contractors	$931,193	$766,473	$507,332
238990	All Other Specialty Trade Contractors ..	862,849	640,416	409,777
Abrasive Blasting—Shipyards*				
336611a	Ship Building and Repairing	652,718	168,693	84,478
Welding in Shipyards**				
336611b	Ship Building and Repairing	20,525	5,419	3,007
Total				
Construction Subtotal		1,794,042	1,406,889	917,110
Shipyard Subtotal		673,243	174,112	87,485
Total, All Industries		2,467,286	1,581,001	1,004,594

Note: Figures in rows may not add to totals due to rounding.
* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.
** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.
Source: U.S. DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

Program Cost Savings

This subsection presents OSHA's estimated cost savings from this proposal for each provision individually. Each provision will be discussed separately below. Where there is either no change from the 2017 final rule or a change that does not alter the underlying methodology, such as a change in compliance rates or the elimination of the dermal contact trigger, no underlying methodology or unit cost estimates are presented as they are the same, updated to 2018 dollars, as the 2017 FEA. In other cases both the initial methodology and unit cost estimates are presented. All cost savings by program element, along with the cost savings for each affected NAICS industry, are shown in Table IV–15 at the end of this program cost-savings section.

Exposure Assessment

Overview of Regulatory Requirements in the 2017 Final Rule and Proposed Changes OSHA is not proposing any changes to paragraph (d), Exposure assessment. OSHA is also not changing any estimates to the baseline compliance rate with this paragraph. Hence, there are no cost savings for this provision.

Beryllium Regulated Areas (Shipyards) And Competent Person (Construction)

OSHA is not proposing any changes to paragraph (e), the regulated areas provision in shipyards or the competent person provision in construction, nor are there any changes to compliance rates. Hence, there are no cost savings for this provision.

Methods of Compliance

Overview of Regulatory Requirements in the 2017 Final Rule

Under the current beryllium standards, employers are required to establish and maintain a written exposure control plan.

Further, employers must review it at least annually, and must update the exposure control plan when:

(A) Any change in production processes, materials, equipment, personnel, work practices, or control methods results or can reasonably be expected to result in new or additional airborne exposures to beryllium;

(B) The employer becomes aware that an employee has a beryllium-related health effect or symptom, or is notified that an employee is eligible for medical removal; or

(C) The employer has any reason to believe that new or additional airborne exposures are occurring or will occur.

Finally, the employer must make a copy of the written exposure control plan accessible to each employee who is, or can reasonably be expected to be, exposed to airborne beryllium.

Paragraph (f)(2)(i) of the 2017 final standards requires employers to use at least one engineering or work practice control where exposures are, or can reasonably be expected to be, above the action level unless the employer can establish that such controls are not feasible or that airborne exposure is below the action level. Paragraph (f)(3) prohibits rotation of workers among jobs to achieve compliance with the TWA PEL and STEL.

Cost Savings Estimates of This Proposal

For the written exposure control plan, OSHA is proposing several revisions. First, OSHA proposes to remove the words ''airborne'' and ''or dermal contact with'' as qualifiers for exposure to beryllium. This would not change coverage of workers for which a written exposure control plan is needed for these sectors, and would therefore have no impact on costs. This proposal would reduce the number of elements that must explicitly be listed in the plan. The elements OSHA is proposing to eliminate are: Procedures for minimizing cross contamination and the migration of beryllium within or to locations outside the workplace; procedures for removing, laundering, cleaning, storing, repairing, and disposing of beryllium contaminated PPE, including clothing, and equipment including respirators; a separate listing of operations and job titles for those that would entail beryllium exposure above action level; and a separate listing of those that would be above the TWA PEL or STEL. This streamlined written

control plan would still include a list of operations and job titles that involve exposure to beryllium; a list of engineering controls, work practices, and respiratory protection; and procedures for restricting access to work areas where airborne exposures are, or can reasonably be expected to be, above the TWA PEL or STEL. OSHA is also proposing a new requirement to list procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment.

The agency estimates that the cost for the written exposure control plan will be cut in half due to the reduced requirements in this proposal. This estimate includes the additional time needed for the new paragraph that requires including procedures for containment. OSHA estimated in the current beryllium standards that the time burden *per establishment* for an average-sized firm to develop the initial written exposure control plan was 8 hours. With the simplified written plan requirements, the agency thus judges that a manager will need only 4 hours, a reduction of 4 hours, for a per establishment cost savings of $313.08 at an hourly wage of $78.27 (Human Resources Managers, SOC: 11–3121), to develop the plan.

In addition, because larger firms with more affected workers will need to develop more complicated written control plans, OSHA estimated for the current beryllium standards that the development of a plan would require an extra thirty minutes of a manager's time per affected employee. The reduced number of job titles and operations that would need to be listed in some cases for this proposal, as well as other elements, will decrease this burden, and the agency has lowered the time per affected employee to 15 minutes, a reduction of 15 minutes. The cost savings for 15 minutes less of a manager's time per affected employee to develop a less complicated plan is $19.57 (0.25 × $78.27) per affected employee in this PEA.

Because of various triggers under which the employer would have to update the plan at least annually after the first year, the agency further estimated that in the current beryllium standards, on average, managers would need 12 minutes (0.2 hours) per affected employee per quarter—or 48 minutes (4 × 12), which equals 0.8 hours, per affected employee per year—to review and update the plan. The streamlined plan will similarly be simpler to update, and the agency assumes the amount will be cut in half, from 48 minutes per employee per year to 24 minutes, a reduction of 24 minutes. Thus, the cost savings for managers to review and update the plan would be $31.31 (0.4 × $78.27 per affected employee) for years 2–10.

Finally, OSHA estimated 5 minutes of clerical time each year per employee for providing each employee with a copy of the written exposure control plan. This will not change under this proposal, so there are no cost savings for this element. See Table IV–11 for a summary of these unit cost saving estimates.

TABLE IV–11—UNIT COST SAVINGS FOR WRITTEN EXPOSURE CONTROL PLAN

Item	Value
Develop Plan	
HR Manager Hour Decrease per Establishment	4
HR Manager Hour Decrease per Employee	0.25
HR Manager Wage	$78.27
Unit Cost Savings per Establishment	$313.08
Unit Cost Savings per Employee	$19.57
Review Plan	
HR Manager Hour Decrease per Employee	0.10
Times Reviewed per Year	4
HR Manager Wage	$78.27
Unit Cost Savings per Employee	$31.31
Total	
Unit Cost Savings per Establishment	$313.08
Unit Cost Savings per Employee	$50.88

Sources: BLS, 2019a; BLS, 2018; U.S. DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

OSHA estimates that the total annualized cost savings for reducing the requirements for development and update of a written exposure control plan is $122,989 for all affected industries in shipyards and construction.

In addition, OSHA proposes to revise paragraph (f)(2) concerning engineering and work practice controls by removing the requirement to implement one engineering or work practice control where exposures are between the action level and the PEL. However, based on the technological feasibility analysis presented in Chapter IV of the 2017 FEA, OSHA determined that there were no instances in construction or shipyards where this provision would apply (see pp. V–11/12 of the 2017 FEA). Thus, this proposed revision has no effect on costs.

OSHA is not proposing to revise paragraph (f)(3), which prohibits rotation of workers to achieve the TWA PEL and STEL, so there are no cost savings associated with this provision.

OSHA is not proposing to revise the baseline compliance estimates for the requirements of paragraph (f), so there are no associated cost adjustments.

Respiratory Protection

Overview of Regulatory Requirements in the 2017 Final Rule

The employer must provide respiratory protection at no cost to the employee and ensure that each employee uses respiratory protection: During periods necessary to install or implement feasible engineering and work practice controls where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; during operations, including maintenance and repair activities and non-routine tasks, when engineering

and work practice controls are not feasible and airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; during operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL; during emergencies; and when an employee who is eligible for medical removal under paragraph (l)(1) chooses to remain in a job with airborne exposure at or above the action level, as permitted by paragraph (l)(2)(ii) of this standard.

The selection and use of such respiratory protection must be in accordance with the Respiratory Protection standard (29 CFR 1910.134). The employer must provide at no cost to the employee a powered air-purifying respirator (PAPR) instead of a negative pressure respirator when respiratory protection is required, an employee requests one, and the PAPR would provide adequate protection to the employee.

Cost Savings Estimates of This Proposal

Proposed Changes

OSHA is proposing to revise paragraph (g) by removing the requirement to provide respiratory protection during emergencies. In the 2017 final rule, OSHA stated that emergencies should be rare and therefore did not account for any respirator costs due to emergencies. The cost adjustments described in this section are due to revised baseline compliance estimates and are discussed below.

Updated Baseline Compliance Estimates

As discussed in section IV.B of this NPRM, the compliance rate for respirator use, for abrasive blast operators only, is estimated to be 100% in this PEA, due to closer analysis of existing standards for operators. The 2017 FEA estimated compliance rates for respirators for all abrasive blasting occupations as 75%. Hence, there is a cost adjustment due to the 25% of operators who will not need to be provided respirators as estimated under the 2017 final rule. For pot tenders and helpers, OSHA is not estimating a change in the compliance rate for respiratory protection. For welders in shipyards, the change in the exposure profile from the 2017 FEA to the 2017 PEA (as explained above in section IV.B.), and retained in this PEA, slightly decreased respirator use as well. The 2017 FEA estimated a 0% compliance rate for respiratory protection and a 25% compliance rate for setting up a respiratory protection program, while this PEA estimates a 100% compliance rate for both. The 2017 FEA estimated 29.7% of welders in shipyards had beryllium exposures over the new PEL of 0.2 μg/m^3. The 2017 PEA and this PEA estimate that only 3.7% of welders in shipyards have beryllium exposures over the new PEL of 0.2 μg/m^3. As in the 2017 FEA, OSHA is estimating that the beryllium standards will reduce the number of workers with exposures above the PEL by 90 percent.

The cost method that follows is largely the same as that used in the 2017 FEA with updated 2018 wage rates, with two exceptions. First, blasting operators, due to other existing standards (1926.57(f), 1915.34(c)), must use supplied air respirators (SARs) and will not have the option of requesting a PAPR. Second, no cleaning costs for a PAPR were estimated in the 2017 FEA. This is revised below because OSHA now estimates that PAPRs will need to be cleaned periodically.

Unit Cost Estimates

There are five primary costs for respiratory protection. First, there is a cost per establishment to set up a written respirator program in accordance with the respiratory protection standard (29 CFR 1910.134). The respiratory protection standard requires written procedures for the proper selection, use, cleaning, storage, and maintenance of respirators. OSHA estimates that these procedures will take a human resources manager 8 hours to develop, at an hourly wage of $78.27 (Human Resources Managers, SOC: 11–3121), for an initial cost of $626 (8 × $78.27). Every year thereafter, OSHA estimates that the same employee will take 2 hours to update the respirator program, for an annual cost of $157 (2 × $78.27).

The four other major costs of respiratory protection are the per-employee costs for all aspects of respirator use: equipment, training, fit testing, and cleaning.

In the 2017 FEA, no respirator cleaning was assumed to be required for PAPRs. OSHA now believes that despite the fact that PAPRs are assigned to individual employees, PAPRs, like half-mask respirators, will need periodic cleaning. This cleaning cost for a PAPR is estimated to be the same as for a half mask respirator. Periodic cleaning of a PAPR is estimated to be needed every two days, or 125 times annually (250/2). Each cleaning is estimated to take 5 minutes, or 0.08 (5/60) hours, and the wage cost per hour is $25.47 ((Production Occupations, SOC: 51–0000). Multiplied together, this gives an annual respirator cleaning cost of $265.30 (125 × 0.08 × $25.47). Summing these costs together, the total annualized per-employee cost for a full-face powered air-purifying respirator is $1434.50 ($145.27 + $94.33 + $929.60 + $265.30).

Cost Savings Estimates

In the 2017 FEA, OSHA estimated that PAPRs would be used 10 percent of the time in situations where only the APF of 10 provided by a half-mask negative pressure respirator would normally be required to comply with the final beryllium TWA PEL and STEL. For the 25% of pot tenders and clean-up workers who need respirators (accounting for an unchanged baseline compliance rate of 75%), this amounts to 2.5% of the pot tenders and clean-up workers who are still exposed over the PEL after the standards take effect who will use PAPRs. OSHA is therefore adjusting the costs by including the cost of cleaning PAPRs for that 2.5% of workers.

For the revised compliance rate for abrasive blasting operators, from 75% in the 2017 FEA to 100% in this PEA, there is a cost adjustment due to the 25% of overexposed operators after the standards take effect who should not have had costs taken in the 2017 FEA. Since the 2017 FEA did not estimate cleaning costs for PAPRs, the cost savings here will not include such cleaning costs. This cost savings consists of the cost of PAPRs minus cleaning costs (10% of respirators), and the cost of half-mask respirators (90% of respirators).

The cost adjustment due to the change in the exposure profile for welders discussed in section IV.B of this PEA uses this same methodology of accounting for savings due to PAPRs (minus cleaning costs) and half-mask respirators. Furthermore, OSHA notes there is a change in the exposure profile for welders in shipyards from the 2017 FEA, but because the revised baseline compliance rate for these workers is 100%, this does not affect the cost adjustment.

The exposure profile (Table IV–2) shows the number of abrasive blasting operators that are above the 0.2 μg/m^3 PEL. This PEA follows the 2017 FEA of estimating 10% of workers will still be above the PEL after the standards take effect. The compliance rate for operators went from 75% in the 2017 FEA to 100% in this PEA, so 25% of operators above the PEL after the rule is in place were assigned costs in the 2017 FEA that, with the 100% compliance rate, should no longer be taken. In the 2017

FEA, OSHA estimated the average cost of a respirator for an abrasive blasting operator as 90% of the cost of a half-mask respirator and 10% of a PAPR. For the abrasive blasting operators above the PEL, this gives a total cost adjustment of $40,915.

As discussed above, 2.5% of pot-tenders and clean-up workers still exposed above the PEL after the standards take effect will be using PAPRs. The total number of such workers can be found in Table IV–2, and when multiplied by cleaning costs of PAPRs, this gives the additional cost adjustment of $12,238 for the revision from the 2017 FEA of including cleaning costs for PAPRs for these workers.

Welders in shipyards were inadvertently assigned a 0% compliance rate in the 2017 FEA, revised in the 2017 PEA and this PEA to 100%. Hence all welders in shipyards, found in Table IV–2, will be affected. Like all others needing respirators, in the 2017 FEA, 90% were assigned half-mask respirators and 10% were assigned PAPRs. These two groups of welders, multiplied by the costs of their respective type of respirators, but without cleaning costs since cleaning costs were not included in the 2017 FEA, gives the cost adjustment of $858 for welders in shipyards.

The reduction in workers needing respirators and needing to participate in respiratory protection programs due to the update of the compliance rate for abrasive blasting operators in both construction and shipyards and welders in shipyards, the extra cleaning costs for pot-tenders and clean-up workers who opt for PAPRs, and the updated unit costs give a total cost adjustment of $54,011, as shown in Table IV–16.

Tables IV–12 and IV–13 summarizes the unit cost estimates for the two types of respirators.

TABLE IV–12—UNIT RESPIRATORY PROTECTION COST PER EMPLOYEE

Item	Value	
	Half mask	PAPR
Training		
Class size	4	4
Hours	2	4
Employee wage	$25.47	$25.47
Supervisor wage	43.39	43.39
Hourly cost per employee	36.32	36.32
Annual Cost Savings per Employee	72.63	145.27
Respirator Cleaning Cost Savings		
Frequency per year	125	125
Employee hours	0.08	0.08
Employee wage	$25.47	$25.47
Annual Cost Savings per Employee	265.30	265.30
Fit Testing		
Testing group size	4.00	2.00
Employee hours	1.00	2.00
Employee wage	$25.47	$25.47
Supervisor wage	43.39	43.39
Annual Cost Savings per Employee	36.32	94.33
Equipment Cost		
Respirator	$33.68	$971.11
Respirator service life (years)	2	3
Annualized respirator cost savings (3%)	$17.60	$343.32
Annual accessory cost savings	210.42	586.29
Total Annualized Equipment Cost Savings (3%)	228.02	929.60
Total		
Equipment	$228.02	$929.60
Training, cleaning, and fit testing	$374.26	$504.90

Note: Figures in rows may not add to totals due to rounding.

Sources: BLS, 2019a; BLS, 2018; Magidglove, 2012; Grainger, 2012e; Restockit, 2012; Spectrumchemical, 2012; Conney, 2012a; Conney, 2012b; Zoro Tools, 2012a; Grainger, 2019c; Grainger, 2019d; Advanz Lens Goggles, 2019; Gemplers, 2012; Buying Direct, 2012; Amazon.com, 2013; Zoro Tools, 2013; Grainger, 2013b; EnviroSafety Products, 2013; BEA, 2019; U.S. DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis; Grainger, 2019a; Grainger, 2019b.

TABLE IV–13—HALF-MASK AND POWERED AIR PURIFYING RESPIRATOR (PAPR) UNIT COST

	Half-mask	PAPR
Respirator		
Respirator	$33.68	$971.11

TABLE IV–13—HALF-MASK AND POWERED AIR PURIFYING RESPIRATOR (PAPR) UNIT COST—Continued

	Half-mask	PAPR
Annual Costs		
Training	$72.63	$145.27
Cleaning	$265.30	$265.30
Fit Testing	36.32	94.33
Accessories	210.42	586.29
Annual Subtotal	584.67	1,091.19
Annualized Costs		
Years	2	3
Annualized Unit Cost (3%)	$602.28	$1,434.51
Annualized Unit Cost (7%)	$603.30	$1,461.23

Sources: Magidglove, 2012; Grainger, 2012e; Restockit, 2012; Spectrumchemical, 2012; Conney, 2012a; Conney, 2012b; Zoro Tools, 2012a; Grainger, 2019c; Grainger, 2019d; Advanz Lens Goggles, 2019; Gemplers, 2012; Buying Direct, 2012; Amazon.com, 2013; Zoro Tools, 2013; Grainger, 2013b; EnviroSafety Products, 2013; Grainger, 2019a; Grainger, 2019b.

Personal Protective Clothing and Equipment

Overview of Regulatory Requirements in the 2017 Final Rule

Under the 2017 final rule, personal protective clothing and equipment are required for workers in shipyards and construction where exposure exceeds or can reasonably be expected to exceed the TWA PEL or STEL, or where there is a reasonable expectation of dermal contact with beryllium.

The employer must ensure that each employee removes all beryllium-contaminated personal protective clothing and equipment at the end of the work shift or, at the completion of all tasks involving beryllium, or when personal protective clothing or equipment becomes visibly contaminated with beryllium, whichever comes first. All such personal protective clothing and equipment must be removed as specified in the written exposure control plan. Personal protective clothing and equipment must be kept separate from street clothing and the employer must ensure that storage facilities prevent cross-contamination. The employer must ensure that personal protective clothing and equipment is not removed from the workplace except by authorized personnel, with appropriate containers and labels that are in accordance with paragraph (m)(2). All reusable personal protective clothing and equipment must be cleaned, laundered, repaired, and replaced as needed.

The employer must ensure that beryllium is not removed from personal protective clothing and equipment by blowing, shaking, or any other means that disperses beryllium into the air. The employer must inform in writing the persons or the business entities who launder, clean or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of airborne exposure to and dermal contact with beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.

Cost Savings Estimates of This Proposal

OSHA is proposing several revisions to the PPE provisions of the standards. OSHA proposes to remove the requirements regarding storage facilities, providing PPE when there is a reasonable expectation of dermal contact with beryllium, removal of PPE when it becomes visibly contaminated with beryllium, storing and keeping PPE separate from employees' street clothing, removal of beryllium-contaminated PPE from the workplace, and transportation and labeling of PPE that is removed from the workplace. OSHA is also proposing to remove the qualifier ''beryllium-contaminated'' and replace it with ''required by this standard.''

Under these proposed changes, the PPE provisions will only apply to employees who are, or can reasonably be expected to be, exposed over the TWA PEL or STEL. In the 2017 FEA, OSHA also estimated PPE costs for the 25% of employees who would be exposed below the PEL but who nevertheless may have dermal contact with beryllium. OSHA also estimated ten minutes of clerical time for each establishment with laundry needs to notify the cleaners in writing of the potentially harmful effects of beryllium exposure and how the protective clothing and equipment must be handled in accordance with the beryllium standard, so the proposed removal of that provision would result in a cost savings. OSHA did not estimate costs for storage facilities because it judged that no employers would need them.

As stated in the compliance section in IV.B, above, OSHA preliminarily estimates a 90% compliance rate for all PPE for workers who have exposures above the TWA PEL or STEL. This is a change from the 2017 FEA, which estimated a 75% compliance rate for PPE for all workers, not just those exposed above the TWA PEL or STEL, because of the proposed change to the PPE provisions that would only require PPE where exposures can exceed the TWA PEL or STEL. Hence, there is an adjustment to costs due to the decreased number of workers, from 25% to 10%, with exposures above the TWA PEL or STEL who will need PPE. The exposure profile (Table IV–2) shows the number of workers who are exposed above the 0.2 $\mu g/m^3$ PEL. For those above the PEL, the decrease in the compliance rate from 25% to 10%, or 15%, along with OSHA's standard calculation that 10% of those workers will continue to be exposed above the PEL after the standards take effect, means 1.5% of these workers will no longer need PPE. This number of workers times the unit costs (discussed below) gives the cost adjustment for this group. For those workers whose exposures are below the TWA PEL and STEL, there will also be a cost savings for the 25% that the 2017 FEA estimated did not have proper PPE, due to the proposed removal of the dermal contact trigger for PPE. The exposure profile (Table IV–2) shows the number of workers below the PEL. OSHA is proposing to revise the compliance rate from 75% to 100%, so 25% will no longer need PPE. This

number of workers times the unit costs (discussed below) gives the cost adjustment for this group.

The cost savings due to the proposed removal of the requirement to notify laundries is per-establishment, not per-worker, and the number of establishments can be found in Table IV–4. The total number of affected establishments times the cost of clerical time, below, gives the cost savings for this proposed revision.

In the 2017 FEA, OSHA estimated that employers would rent rather than purchase PPE. The annual cost for rental would be $53.67 per employee, inflated from the 2017 FEA estimate of $48.62. The per-establishment annual cost savings for the ten minutes of clerical time required to notify laundries is $4.12 ($24.71 hourly wage, File Clerks SOC 43–4071).

After accounting for the 25% of employees who no longer need PPE due to the removal of the dermal contact trigger, the change in the compliance rate from 75% to 90%, and the removal of the ten minutes of clerical time for notifying laundries, the total annualized cost savings and adjustment for the proposed revisions to the PPE paragraph is estimated to be $164,330 at a 3 percent discount rate.

Hygiene Areas and Practices

Overview of Regulatory Requirements in the 2017 Final Rule

The 2017 final rule requires affected shipyard and construction employers to provide readily accessible washing facilities to remove beryllium from the hands, face, and neck of each employee exposed to beryllium; ensure that employees who have dermal contact with beryllium wash any exposed skin at the end of the activity, process, or work shift and prior to eating, drinking, smoking, chewing tobacco or gum, applying cosmetics, or using the toilet; and provide employees required to use PPE with a designated change room where employees are required to remove their personal clothing. Wherever the employer allows employees to consume food or beverages at a worksite where beryllium is present, the employer must ensure that surfaces in eating and drinking areas are as free as practicable of beryllium and no employees enter any eating or drinking area with personal protective clothing or equipment unless, prior to entry, surface beryllium has been removed from the clothing or equipment by methods that do not disperse beryllium into the air or onto an employee's body. The employer must also ensure that no employees eat, drink, smoke, chew tobacco or gum, or apply cosmetics in work areas where there is a reasonable expectation of exposure above the TWA PEL or STEL.

Cost Savings Estimates in This Proposal

OSHA is proposing to rescind this paragraph in its entirety. Both washing facilities and change rooms would no longer be directly required under this proposal. However, because PPE is still required where airborne beryllium exceeds the TWA PEL or STEL, employers will still need to provide change rooms where exposures are above the TWA PEL or STEL pursuant to the sanitation standards.

The 2017 FEA estimated no costs for readily accessible washing facilities, under the expectation that employers already have such facilities in place where needed, and this PEA retains this estimate. Therefore, OSHA is estimating no cost savings from washing facilities due to this proposal. The 2017 FEA did include costs for disposable head coverings that would be purchased for processes where hair may become contaminated by beryllium. OSHA now believes that employers in construction and shipyards will not incur these costs under the existing standards because unlike in general industry, there are no requirements in construction or shipyards to provide showers where hair can become contaminated with beryllium. OSHA is therefore making a cost adjustment to account for this. The annual cost for one disposable head covering per day in 2018 dollars is $30.78 (Grainger, 2013). The number of workers estimated to need such head coverings in the 2017 FEA is 542; so the total annual cost adjustment is $16,669 ($30.78 × 542).

The agency is not estimating cost savings for the proposed removal of requirements to add a change room and segregated lockers. The sanitation standards (29 CFR 1926.51 and 29 CFR 1915.88) require employers to provide change rooms whenever they require employees to wear PPE to prevent exposure to hazardous or toxic substances. Under this proposal, employers would still be required by the sanitation standards, combined with the PEL requirements in 2017 beryllium final rule, to provide PPE to employees to prevent exposure to beryllium. Therefore, no cost savings would arise from this proposed change.

The proposed revisions to the PPE paragraph would remove the need for employees to change out of PPE, generally at the end of a shift, for those not exposed to airborne beryllium above the TWA PEL and STEL. In the 2017 FEA, OSHA included the cost of changing clothes in the costs for the hygiene provisions rather than the PPE provisions. The cost for a clothing change is the same as in the 2017 FEA, updated to 2018 dollars. The agency expected that, in many cases, a worker will simply be adding, and later removing, a layer of clothing (such as a lab coat, coverall, or shoe covers) at work, which might involve no more than a couple of minutes a day. However, in other cases, a worker may need a full clothing change. Taking all these factors into account, OSHA estimated that a worker using PPE would need 5 minutes per day to change clothes (Document ID 2042, p. V–185). The annual cost per employee to change clothes is $530.61. This cost is based on a production worker earning $25.47 an hour (Production Occupation, SOC: 51–0000) and taking 5 minutes per day to change clothes for 250 days per year ((5/60) × $25.47 × 250).

OSHA's proposed removal of the eating and drinking areas and prohibited activities provisions of paragraph (i) have cost implications only for training, which is discussed later in this cost section.

The agency estimates the total annualized cost savings of the proposed removal of paragraph (i) to be $304,052 for all affected establishments. The breakdown of these cost savings by NAICS code can be seen in Table IV–15 at the end of this program cost-savings section.

Housekeeping

Overview of Regulatory Requirements in the 2017 Final Rule

The housekeeping provisions require the employer to follow the written exposure control plan when cleaning beryllium-contaminated areas, ensure that all spills and emergency releases of beryllium are cleaned up promptly and in accordance with the written exposure control plan required under paragraph (f)(1) of this standard. The provisions require the employer to ensure the use of HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure when cleaning beryllium-contaminated areas, and prohibit the employer from allowing dry sweeping or brushing for cleaning in such areas unless HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure are not safe or effective. The provisions also prohibit the employer from allowing the use of compressed air for cleaning in beryllium-contaminated areas unless the compressed air is used in conjunction with a ventilation system designed to capture the particulates made airborne

by the use of compressed air. Where employees use dry sweeping, brushing, or compressed air to clean in beryllium-contaminated areas, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with paragraphs (g) and (h) of the standards. The employer must also ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the re-entrainment of airborne beryllium in the workplace. When the employer transfers materials containing beryllium to another party for use or disposal, the employer must provide the recipient with the warning required by paragraph (m).

Cost Savings Estimates in this Proposal

OSHA is proposing to remove the requirements to follow the written exposure control plan when cleaning and to promptly clean up spills and emergency releases. OSHA is also proposing to revise the cleaning methods requirements to remove the reference to HEPA-filtered vacuuming and to trigger these provisions on the presence of dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL, rather than on the presence of a ''beryllium-contaminated area.'' In addition, OSHA is proposing to remove the qualifier ''in beryllium-contaminated areas'' from the requirement to provide PPE and respiratory protection in accordance with other provisions in the standards. Next, OSHA is proposing to prohibit the use of compressed air for cleaning where the use of compressed air causes, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL. Finally, OSHA is proposing to remove the requirement to provide a warning when transferring materials containing beryllium to another party for use or disposal.

The agency is estimating cost savings for removing the requirement to use HEPA-filtered vacuums for shipyards and construction and for removing the need for a warning label when transferring materials containing beryllium to another party for use or disposal. The other cost included for this provision is labor time spent doing housekeeping tasks, and the agency estimates the proposed revisions do not alter its 2017 FEA estimate of an additional 5 minutes per day for each employee.

In the 2017 FEA, OSHA estimated a compliance rate for the housekeeping provisions of 75% for all workers in abrasive blasting based on the agency's determination that other standards required some housekeeping for abrasive blasting in both construction and shipyards. As discussed above, a further review of other standards has led the agency to revise its compliance rate for housekeeping to 100%. While the proposed revisions will limit the methods that employers may use to clean up beryllium, OSHA estimates that cleaning methods which do not disperse beryllium into the air take approximately the same amount of time as cleaning methods already in use. OSHA is making a cost adjustment in this PEA for the additional 25% of workers in abrasive blasting operations who are now estimated to be performing housekeeping tasks. Furthermore, while those areas that are below the TWA PEL and STEL no longer have any requirements for housekeeping tasks, OSHA is not estimating an additional cost savings because its revised compliance estimate is already at 100%. OSHA estimated in the 2017 FEA that welding in shipyards had a 0% compliance rate for housekeeping. This has also been changed to 100% compliance in this PEA, as explained in section B of this PEA. OSHA is also making a cost adjustment for this change in the compliance rate.

OSHA estimated the following costs for the housekeeping provisions in the 2017 FEA (Document ID 2042, pp. V–187–190, amounts adjusted for 2018 dollars): A one-time annualized cost per worker of a HEPA-filtered vacuum ($640); the annual cost per worker of the additional time needed to perform housekeeping ($531); and the annual cost of the warning labels per worker ($6). The total annual per-employee cost was $1,177 ($640 + $531 + $6). This per-employee cost is then multiplied by the 25% of workers in abrasive blasting operations and 100% of the welders who are now estimated to be in compliance versus the 2017 FEA to calculate the cost adjustment due to the revised baseline compliance rates.

The total annualized cost adjustment in this proposal due to revisions to this ancillary provision are $1,734,022. The breakdown of these cost savings by NAICS code is shown in Table IV–15 at the end of this program cost-savings section.

Medical Surveillance

Overview of Regulatory Requirements in the 2017 Final Rule

The 2017 final rule requires affected employers in shipyards and construction to make medical surveillance available at a reasonable time and place, and at no cost, to the following employees:

1. Employees who are, or are reasonably expected to be, exposed at or above the action level for more than 30 days per year;

2. Employees who show signs or symptoms of chronic beryllium disease (CBD) or signs or symptoms of other beryllium-related health effects;

3. Employees exposed to beryllium during an emergency; and

4. Employees whose most recent written medical opinion required by this standard recommends periodic medical surveillance.

The medical surveillance paragraph also specifies the frequency with which examinations must be provided, the required contents of the examination, the information that the employer must provide to the physician or other licensed healthcare provider (PLHCP), the information that must be contained in the physician's written medical report for the employee, the information that must be contained in the physician's written medical opinion for the employer, and procedures and requirements related to referral to a CBD diagnostic center.

Cost Savings of This Proposal

OSHA is proposing minor changes to the medical surveillance provision of the 2017 final rule.

First, OSHA proposes to remove the emergency trigger for medical surveillance. The 2017 FEA did not break out a separate cost for emergencies, stating that ''a very small number of employees will be affected by emergencies in a given year'' (p. V–196). The agency therefore preliminarily concludes that removing the emergency trigger will result in de minimis cost savings.

OSHA also proposes to replace the phrase ''airborne exposure to and dermal contact with beryllium'' in these provisions with the simpler phrase ''exposure to beryllium.'' As explained in the Summary and Explanation section, this is not a substantive change and has no cost implications.

One proposed change would clarify the definition of *CBD diagnostic center,* that a center has a pulmonologist or pulmonary specialist on staff and must be capable of performing a variety of tests commonly used in the diagnosis of CBD, but need not necessarily perform all of the tests during all CBD evaluations. The 2016 FEA in fact did not estimate that all tests would be performed during all CBD evaluations, and so the agency takes no cost savings for this change.

To account for the proposed revision to the definition of *CBD diagnostic center,* OSHA is proposing to amend paragraph (k)(7)(i) to clarify that the employer must provide, at no cost to the employee and within a reasonable time after consultation with the CBD diagnostic center, any of the following tests that a CBD diagnostic center must be capable of performing, if deemed appropriate by the examining physician at the CBD diagnostic center: a pulmonary function test as outlined by American Thoracic Society criteria testing, bronchoalveolar lavage (BAL), and transbronchial biopsy. This proposed change to paragraph (k)(7) would not change the requirements of the beryllium standard and therefore would not change the costs of compliance with the standard.

OSHA is also proposing that the employer provide an initial consultation with the CBD diagnostic center, rather than the full evaluation, within 30 days of the employer receiving notice that a full evaluation must be performed. This initial consultation can be done in conjunction with the tests but it is not required to be. As the initial consultation may be conducted remotely, by phone or virtual conferencing, the cost of the consultation would consist only of time spent by the employee and the PLHCP and would not have to include any travel or accommodation. In the 2017 FEA, and the 2018 PEA in support of the proposal to revise the general industry beryllium standard, OSHA accounted for the cost of both the employee's time and the examining physician's time for a 15-minute discussion (2017 FEA, p. V–206; 83 FR at 63764). Because the consultation would replace this initial discussion, there would be no additional cost. Furthermore, OSHA expects that allowing more flexibility in scheduling the tests at the CBD diagnostic center would allow employers to find more economical travel and accommodation options. As in the 2018 PEA in support of the proposed revisions to the general industry beryllium standard, the agency therefore preliminarily concludes these changes would produce minor, if any, cost savings, and no additional costs.

Another proposed change with potential implications for medical surveillance costs is a proposed change in the definition of *confirmed positive.* OSHA is proposing to clarify that the set of test results must all be obtained from a single 30-day testing cycle. The exact effect of this proposed change is uncertain as it is unknown how many employees would have a series of BeLPT results associated with a confirmed positive finding (two abnormal results, one abnormal and one borderline result, or three borderline results) over an unlimited period of time, but would not have any such combination of results within a single testing cycle. As in the PEA in support of the 2018 proposed revisions to the general industry standard, OSHA preliminarily concludes that this proposed change would not increase compliance costs and would incidentally yield some cost savings by lessening the likelihood of false positives.

Other proposed changes are to align these standards with the (proposed) general industry standard and, similar to the economic analysis there, are also estimated to only have de minimis effects on costs.

Medical Removal

Overview of Regulatory Requirements in the 2017 Final Rule

OSHA is not proposing any changes to paragraph (l), Medical removal protection. OSHA is also not proposing any changes to the baseline compliance rate with this paragraph. Therefore, there are no cost savings associated with this provision.

Communication of Hazards

Overview of Regulatory Requirements in the 2017 Final Rule

Paragraph (m) of the beryllium standards for construction and shipyards sets forth the employer's obligations to comply with OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200) relative to beryllium, and to provide warnings and training to employees about the hazards of beryllium.

Cost Savings in This Proposal

OSHA is proposing three changes to paragraph (m) in both the construction and shipyards standards. First, OSHA is proposing to remove the paragraph (m) provisions that require specific language for warning labels applied to materials designated for disposal or PPE when removed from the workplace (paragraph (m)(2) in construction and paragraph (m)(3) in shipyards). This is consistent with OSHA's proposal to remove the corresponding requirements to provide such warning labels and any cost implications are accounted for in the sections on those corresponding provisions.

Second, OSHA is also proposing to revise paragraph (m)(3)(i) in construction and paragraph (m)(4)(i) in boatyards—renumbered as paragraphs (m)(2)(i) and (m)(3)(i), respectively—to remove dermal contact as a trigger for training. This is not a substantive change, so OSHA expects no cost implications.

Third, OSHA is proposing to revise the provisions of paragraph (m) for employee information and training related to emergency procedures (paragraph (m)(3)(ii)(D) in construction and paragraph (m)(4)(ii)(D) in shipyards) and personal hygiene practices (paragraph (m)(3)(ii)(E) in construction and paragraph (m)(4)(ii)(E) in shipyards), for consistency with OSHA's proposed removal of emergency procedures and personal hygiene practices from the construction and shipyards standards. OSHA estimates that this proposed change will lead to a cost savings.

Below the agency first presents the methodology for training from the 2017 final rule with unit cost estimates updated to 2018 dollars, and then discusses and estimates the cost effects of this proposal.

In the 2017 FEA, OSHA estimated that training, which includes hazard communication training, would be conducted by in-house safety or supervisory staff with the use of training modules and videos and would last, on average, eight hours. (Note that this estimate does not include the time taken for hazard communication training that is already required by 29 CFR 1910.1200.) The agency judged that establishments could purchase sufficient training materials at an average cost of $2.21 per worker, encompassing the cost of handouts, video presentations, and training manuals and exercises. For initial and periodic training, OSHA estimates an average class size of five workers (each at a wage of $25.47 (updated from Production Occupations, SOC: 51–0000)) with one instructor (at a wage of $42.51 (Median Wage for Training and Development Specialists, SOC: 13–1151)) over an eight hour period. The per-worker cost of initial training is therefore $273.99 ((8 × $25.47) + (8 × $42.51/5) + $2.21).

Annual retraining of workers is also required by the standards. OSHA estimates the same unit costs as for initial training, so retraining would require the same per-worker cost of $273.99.

The first cost savings comes explicitly from the training provision itself, where the proposal rescinds training about emergency procedures. The agency estimates that this will decrease training time by 15 minutes. Other decreases in training time come from rescinded portions of hygiene requirements, including: Washing areas, change

rooms, eating and drinking areas, and cross-contamination. The agency estimates that this would decrease needed training by another hour.

Together this would decrease the required per-employee training from 8 hours to 6.75 hours. Hence, the per-worker cost of initial and retraining is $231.52 ((6.75 × $25.47) + (6.75 × $42.51/5) + $2.21).

Finally, using these unit cost estimates, as well as accounting for industry-specific baseline compliance rates (which, as explained in section IV.B of this PEA, are unchanged from the 2017 FEA), and based on a 34.7 percent new hire rate (BLS 2018c, using the annual manufacturing new hire rate, as was done in the 2017 FEA), OSHA estimates that the proposed revisions to the training requirements in the standards would result in an annualized total cost savings of $102,102. The breakdown of these cost savings by NAICS code is shown in Table IV–15 at the end of this program cost-savings section.

Familiarization Costs

In the 2017 final rule, OSHA included familiarization costs to account for employers' time to understand the ancillary provisions and the other new and revised components of the applicable new standard. The changes that OSHA is proposing to most provisions are not extensive. Employers would thus only need to spend a brief amount of time reviewing them. OSHA expects that if this proposal is adopted, employers would spend one hour per firm reviewing its changed requirements.

Table IV–14 shows the unit costs, by establishment size, of reviewing the changes in this proposal. These costs will likely be one-time costs incurred during the first year after the effective date of a final rule resulting from this proposal, but the aggregate costs are annualized for consistency with the other estimates for this proposal. Based on the unit familiarization (negative) cost savings in Table IV–14, the total annualized familiarization costs of this proposal are estimated to be $14,221. The breakdown of these costs by NAICS code is in Table IV–15 at the end of this program cost-savings section, and these costs are reflected in the tables as a negative cost savings.

TABLE IV—14: FAMILIARIZATION—CONSTRUCTION AND SHIPYARD ASSUMPTIONS AND UNIT COST SAVINGS

Item	Establishment size (employees)		
	Small (<20)	Medium (20–499)	Large (500+)
Hours per establishment	1.0	1.0	1.0
Total cost savings per establishment	−$43.39	−$43.39	−$43.39
Annualized Cost Savings (3 Percent)	−$5.09	−$5.09	−$5.09

Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.
Note: Figures in rows may not add to totals due to rounding.

TABLE IV–15—ANNUALIZED COST SAVINGS OF PROGRAM REQUIREMENTS FOR INDUSTRIES AFFECTED BY THE RE-PROPOSED BERYLLIUM STANDARD BY SECTOR AND SIX-DIGIT NAICS INDUSTRY
[in 2018 Dollars using a 3 Percent Discount Rate]

Application group/NAICS	Industry	Rule familiarization	Exposure assessment	Regulated areas/ competent person	Medical surveillance	Medical Removal Provision	Written exposure control plan	Protective work clothing & equipment	Hygiene areas and practices	House-keeping	Training	Total program cost savings
Abrasive Blasting—Construction												
238320	Painting and Wall Covering Contractors.	−$5,545	$0	$0	$0	$0	$46,627	$61,974	$115,657	$653,601	$38,490	$910,805
238990	All Other Specialty Trade Contractors.	−$5,138	0	0	0	0	43,205	57,426	107,168	605,630	35,665	843,957
Abrasive Blasting—Shipyards												
336611a	Ship Building and Repairing.	−$3,505	0	0	0	0	32,027	43,418	81,172	458,720	27,014	638,846
Welding—Shipyards												
336611b	Ship Building and Repairing.	−$34	0	0	0	0	1,129	1,512	55	16,072	932	19,667
Total												
Construction Subtotal		−$10,682	0	0	0	0	89,833	119,400	222,825	1,259,230	74,156	1,754,762
Maritime Subtotal		−$3,538	0	0	0	0	33,157	44,930	81,227	474,792	27,946	658,513
Total, All Industries		−$14,221	0	0	0	0	122,989	164,330	304,052	1,734,022	102,102	2,413,275

Note: Figures in rows may not add to totals due to rounding.
Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

Total Annualized Cost Savings

As shown in Table IV–16, the total annualized cost savings of this proposal, using a 3 percent discount rate, is estimated to be about $2.5 million.

TABLE IV–16—ANNUALIZED COST SAVINGS TO INDUSTRIES AFFECTED BY THE RE-PROPOSED BERYLLIUM STANDARD, BY SECTOR AND SIX-DIGIT NAICS INDUSTRY
[2018 Dollars, 3 percent discount rate]

Application group/NAICS	Industry	Engineering controls and work practices	Respirator cost savings	Program cost savings	Total cost savings
Abrasive Blasting—Construction					
238320	Painting and Wall Covering Contractors	$0	$20,389	$910,805	$931,193
238990	All Other Specialty Trade Contractors	$0	$18,892	$843,957	$862,849
Abrasive Blasting—Shipyards					
336611a	Ship Building and Repairing	0	13,873	638,846	652,718
Welding—Shipyards					
336611b	Ship Building and Repairing	0	858	19,667	20,525
Total					
Construction Subtotal		0	39,281	1,754,762	1,794,042
Maritime Subtotal		0	14,730	658,513	673,243
Total, All Industries		0	54,011	2,413,275	2,467,286

Note: Figures in rows may not add to totals due to rounding.
Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

Time Distribution of Cost Savings

OSHA analyzed the stream of (un-annualized) compliance cost savings for the first ten years after the proposed rule would take effect. As shown in Table IV–17, total compliance cost savings are expected to decline from year 1 to year 2 by almost half after the initial set of capital and program start-up expenditure savings has been incurred. Cost savings are then essentially flat with relatively small variations for the following years.

TABLE IV–17—DISTRIBUTION OF UNDISCOUNTED COMPLIANCE COSTS AND COST SAVINGS BY YEAR
[2018 Dollars]

Year	Program cost savings	Respirators	Engineering controls	Rule familiarization	Total
1	$4,215,199	$86,195	$0	−$121,305	$4,180,088
2	2,178,201	46,071	0	0	2,224,272
3	2,178,201	47,743	0	0	2,225,944
4	2,178,201	51,427	0	0	2,229,628
5	2,178,201	47,743	0	0	2,225,944
6	2,178,201	46,071	0	0	2,224,272
7	2,178,201	53,098	0	0	2,231,300
8	2,178,201	46,071	0	0	2,224,272
9	2,178,201	47,743	0	0	2,225,944
10	2,178,201	51,427	0	0	2,229,628

Note: Figures in rows may not add to totals due to rounding.
Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

Table IV–18 breaks out total cost savings by each application group for the first ten years. Each application group follows the same pattern of a sharp decrease in cost savings between years 1 and 2, and then remains relatively flat for the remaining years.

TABLE IV–18—TOTAL UNDISCOUNTED COST SAVINGS OF THE RE-PROPOSED BERYLLIUM STANDARD BY YEAR
(2018 Dollars)

Application group	Year									
	1	2	3	4	5	6	7	8	9	10
Abrasive Blasting—Construction	$3,039,516	$1,617,334	$1,618,538	$1,621,189	$1,618,538	$1,617,334	$1,622,392	$1,617,334	$1,618,538	$1,621,189
Abrasive Blasting—Shipyards	1,103,334	588,796	589,234	590,200	589,234	588,796	590,639	588,796	589,234	590,200
Welding—Shipyards	37,239	18,142	18,172	18,239	18,172	18,142	18,269	18,142	18,172	18,239
Total	4,180,088	2,224,272	2,225,944	2,229,628	2,225,944	2,224,272	2,231,300	2,224,272	2,225,944	2,229,628

Note: Figures in rows may not add to totals due to rounding.
Source: U.S. DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

Appendix IV–A

Summary of Annualized Cost Savings by Entity Size Under Alternative Discount Rates

In addition to using a 3 percent discount rate in its cost analysis, OSHA estimated compliance cost savings using alternative discount rates of 7 percent and 0 percent. Tables IV–19 and IV–20 present—for 7 percent and 0 percent discount rates, respectively—total annualized cost savings for affected employers by NAICS industry code and employment size class (all establishments, small entities, and very small entities).

As shown in these tables, the choice of discount rate has only a minor effect on total annualized compliance cost savings—for example, annualized cost savings for all establishments remain flat/slightly increase to $2.5 million using a 7 percent discount rate, and remain flat/slightly decrease to $2.5 million using a 0 percent discount rate.

TABLE IV–19—TOTAL ANNUALIZED COST SAVINGS, BY SECTOR AND SIX-DIGIT NAICS INDUSTRY, FOR ENTITIES AFFECTED BY THE SHIPYARD AND CONSTRUCTION BERYLLIUM STANDARDS

[By size category, 7 percent discount rate, 2018 dollars]

Application group/NAICS	Industry	All establishments	Small entities (SBA-defined)	Very small entities (<20 employees)
Abrasive Blasting—Construction				
238320	Painting and Wall Covering Contractors	$950,654	$782,690	$518,407
238990	All Other Specialty Trade Contractors	$880,881	$654,058	$418,827
Abrasive Blasting—Shipyards*				
336611a	Ship Building and Repairing	$666,280	$172,674	$86,542
Welding in Shipyards**				
336611b	Ship Building and Repairing	$21,028	$5,583	$3,100
Total				
Construction Subtotal		$1,831,536	$1,436,748	$937,234
Shipyard Subtotal		$687,308	$178,257	$89,641
Total, All Industries		$2,518,843	$1,615,005	$1,026,876

Note: Figures in rows may not add to totals due to rounding.

* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.

** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.

Source: U.S. DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

TABLE IV–20—TOTAL ANNUALIZED COST SAVINGS, BY SECTOR AND SIX-DIGIT NAICS INDUSTRY, FOR ENTITIES AFFECTED BY THE SHIPYARD AND CONSTRUCTION BERYLLIUM STANDARDS

[By size category, 0 percent discount rate, 2018 dollars]

Application group/NAICS	Industry	All establishments	Small entities (SBA-defined)	Very small entities (<20 employees)
Abrasive Blasting—Construction				
238320	Painting and Wall Covering Contractors	$929,939	$765,329	$506,383
238990	All Other Specialty Trade Contractors	$861,686	$639,408	$408,952
Abrasive Blasting—Shipyards*				
336611a	Ship Building and Repairing	$651,883	$168,209	$84,196
Welding in Shipyards**				
336611b	Ship Building and Repairing	$20,479	$5,387	$2,988
Total				
Construction Subtotal		$1,791,625	$1,404,737	$915,335
Shipyard Subtotal		$672,362	$173,596	$87,184
Total, All Industries		$2,463,987	$1,578,333	$1,002,520

Note: Figures in rows may not add to totals due to rounding.

* Employers in application group Abrasive Blasting—Shipyards are shipyards employing abrasive blasters that use mineral slag abrasives to etch the surfaces of boats and ships.

** Employers in application group Welding in Shipyards employ welders in shipyards. Some of these employers may do both welding and abrasive blasting.

Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

Appendix IV–B

Summary of Annualized Cost Savings by Cost Type Under Alternative Discount Rates

In addition to using a 3 percent discount rate in its cost analysis, OSHA estimated compliance cost savings using alternative discount rates of 7 percent and 0 percent. Tables IV–21 and IV–22 present—for 7 percent and 0 percent discount rates, respectively—total annualized cost savings for affected employers by NAICS industry code and type of cost savings.

TABLE IV–21—ANNUALIZED COMPLIANCE COST SAVINGS FOR EMPLOYERS AFFECTED BY THE RE-PROPOSED BERYLLIUM STANDARD BY SECTOR AND SIX-DIGIT NAICS INDUSTRY

[7 Percent discount rate, in 2018 dollars]

Application group/NAICS	Industry	Engineering controls and work practices	Respirator cost savings	Program cost savings	Total cost savings
Abrasive Blasting—Construction					
238320	Painting and Wall Covering Contractors.	$0	$20,892	$929,762	$950,654
238990	All Other Specialty Trade Contractors	$0	$19,358	$861,523	$880,881
Abrasive Blasting—Shipyards					
336611a	Ship Building and Repairing	$0	$14,196	$652,084	$666,280
Welding—Shipyards					
336611b	Ship Building and Repairing	$0	$873	$20,154	$21,028
Total					
Construction Subtotal.	$0	$40,250	$1,791,285	$1,831,536	
Maritime Subtotal	$0	$15,069	$672,238	$687,308	
Total, All Industries	$0	$55,319	$2,463,524	$2,518,843	

Note: Figures in rows may not add to totals due to rounding.
Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

TABLE IV–22—ANNUALIZED COMPLIANCE COST SAVINGS FOR EMPLOYERS AFFECTED BY THE RE-PROPOSED BERYLLIUM STANDARD BY SECTOR AND SIX-DIGIT NAICS INDUSTRY

[0 Percent discount rate, in 2018 dollars]

Application group/NAICS	Industry	Engineering controls and work practices	Respirator cost savings	Program cost savings	Total cost savings
Abrasive Blasting—Construction					
238320	Painting and Wall Covering Contractors.	$0	$20,334	$909,605	$929,939
238990	All Other Specialty Trade Contractors.	0	18,842	842,845	861,686
Abrasive Blasting—Shipyards					
336611a	Ship Building and Repairing	0	13,834	638,049	651,883
Welding—Shipyards					
336611b	Ship Building and Repairing	0	855	19,623	20,479
Total					
Construction Subtotal		0	39,176	1,752,450	1,791,625
Maritime Subtotal		0	14,690	657,672	672,362
Total, All Industries		0	53,865	2,410,122	2,463,987

Note: Figures in rows may not add to totals due to rounding.
Source: US DOL, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

E. Benefits

The changes proposed in this NPRM are designed to accomplish three goals: (1) To more appropriately tailor the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the beryllium standards' requirements and other OSHA standards; (2) to aid compliance and enforcement across the beryllium standards by avoiding inconsistency, where appropriate, between the shipyards and construction standards and proposed revisions to the general industry standard; and (3) to clarify certain requirements with respect to materials containing only trace amounts of beryllium. As to the first group of changes, this NPRM clarifies that OSHA did not, and does not, intend to apply the provisions aimed at protecting workers from the effects of dermal contact to industries that only work with beryllium in trace amounts where there is limited or no airborne exposure. In the prior FEA, OSHA did not isolate any quantifiable benefits from avoiding beryllium sensitization from dermal contact (see discussion at p. VII–16 through VII–18). Therefore, OSHA preliminarily concludes that the proposed revisions in this NPRM that focus on dermal contact will not have any impact on OSHA's previous benefit estimates for the standards as a whole.

OSHA also does not expect the second and third groups of proposed changes, *i.e.,* those intended to more closely tailor the standards' requirements to the construction and shipyard industries and closely align them to the general industry standard's requirements, where appropriate, to result in a reduction in benefits. Rather, as explained in the Summary and Explanation, OSHA believes that the proposed changes would maintain safety and health protections for workers while aligning the standards with the intent behind the 2017 final rule and otherwise preventing costs that could follow from misinterpretation or misapplication of the standards. Therefore, OSHA preliminarily determines that the effect of these proposed revisions on the benefits of the standards as a whole would be negligible. OSHA invites comment on this preliminary determination.

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Economic Feasibility Analysis and Regulatory Flexibility Certification

Economic Feasibility Analysis

In the 2017 FEA, OSHA concluded that the beryllium standards for construction and shipyards were both economically feasible (see 82 FR at 2471). OSHA is proposing to modify some of the ancillary provisions in both standards and has preliminarily concluded that the proposed revisions would, overall, reduce costs for employers in both sectors (see section D, Costs of Compliance, in this PEA). Because the effect of this proposed rule is a net reduction in costs, OSHA has preliminarily determined that this proposal is economically feasible in both the construction and shipyard sectors.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA has examined the regulatory requirements of the proposal for construction and shipyards to determine whether they would have a significant economic impact on a substantial number of small entities. This proposal would modify certain ancillary provisions for shipyards and

construction, resulting in a reduction of overall costs. Furthermore, the agency believes that this proposal would not impose any additional costs on small entities. Accordingly, OSHA certifies that the proposal would not have a significant economic impact on a substantial number of small entities.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), OSHA has estimated the total annualized cost savings of this proposed rule, using a 3 percent discount rate, to be about $2.5 million, or using a 7 percent discount rate, to be about $2.5 million. Therefore, this proposed rule, if finalized, is expected to be an Executive Order 13771 deregulatory action.

VI. OMB Review Under the Paperwork Reduction Act of 1995

A. Overview

OSHA is proposing to update the beryllium standards for the construction and shipyards industries, which contain collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and OMB regulations at 5 CFR part 1320. The beryllium standards for general industry (29 CFR 1910.1024), construction (29 CFR 1926.1124), and shipyards (29 CFR 1915.1024)—contain collection of information (paperwork) requirements that have been previously approved by OMB. The requirements of all three standards are currently contained in the approved information collections request (ICR) under OMB control number 1218–0267. For purposes of OMB review under the PRA, OSHA is proposing to separate the collections of information in the beryllium standards for construction and shipyards from those in the general industry standard. Therefore, the agency is submitting two ICRs—one for the construction industry and one for the shipyards sector—and the agency is requesting two new OMB control numbers 1218–0NEW and 1218–NEW2. In addition, since OSHA is proposing to separate the collections of information in the beryllium standards for construction and shipyards in this proposal, OSHA is also proposing to remove the collections of information that are related to construction and shipyards from the collections of information previously approved by OMB under control number 1218–0267. There is a separate rulemaking that addresses changes to the collection of information for general industry under number 1218–0267 (see 83 FR 63746–63770). The PRA defines ''collection of information'' to mean ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format'' (44 U.S.C. 3502(3)(A)). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it, and the agency displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

B. Solicitation of Comments

OSHA prepared and submitted two revised ICRs to OMB, separating the collections of information in the shipyards and construction standards from the existing OMB-approved paperwork package, and proposing to remove certain collections of information for those industries currently contained in that paperwork package, in accordance with 44 U.S.C. 3507(d). The agency solicits comments on the removal of these collection of information requirements and reduction in estimated burden hours associated with these requirements, including comments on the following items:

- Whether the collections of information 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 cost) of the collections of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information (78 FR at 56438).

C. Proposed Information Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about these two ICRs.

Construction (ICR):

1. *Title:* Occupational Exposure to Beryllium for the Construction Industry.

2. *Description of the ICR:* The proposal would separate the construction standards from the currently approved Beryllium ICR and remove existing collection of information requirements currently approved by OMB.

3. *Brief Summary of the Information Collection Requirements:*

The proposed standard for occupational exposure to beryllium and beryllium compounds in construction would revise the collection of information requirements contained in the existing ICR for that industry, approved under OMB under control number 1218–0267. OSHA is proposing, first, to separate the construction collection of information requirements from those of the general industry and shipyards standards, and requests a new control number specific to the construction standard (1218–0NEW). Next, OSHA is proposing to update the new ICR to reflect its proposal to (1) remove provisions in the construction standard that require employers to collect and record employees' social security number; (2) revise the contents of the written exposure control plan; and (3) remove certain requirements related to written warnings. See Table VI.1.

TABLE VI.1—COLLECTION OF INFORMATION REQUIREMENTS BEING REVISED IN THE BERYLLIUM STANDARD FOR CONSTRUCTION

Section number and title	Currently approved collection of information requirements	Proposed action
§ 1926.1124(f)(1)(i)—Methods of Compliance—Written Exposure Control Plan.	• A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium;	Remove paragraphs (f)(1)(i)(B) through (E) and (H), written exposure control plan.
	• A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium;	Revise paragraph (f)(1)(i)(A) to list operations and job titles reasonably expected to involve exposure to beryllium.

TABLE VI.1—COLLECTION OF INFORMATION REQUIREMENTS BEING REVISED IN THE BERYLLIUM STANDARD FOR CONSTRUCTION—Continued

Section number and title	Currently approved collection of information requirements	Proposed action
	• A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL; • Procedures for minimizing cross-contamination; • Procedures for minimizing the migration of beryllium within or to locations outside the workplace; • A list of engineering controls, work practices, and respiratory protection required by paragraph (f)(2) of the standard; • A list of personal protective clothing and equipment required by paragraph (h) of the standard; • Procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators; • Procedures used to restrict access to work areas when airborne exposures are, or can reasonably be expected to be, above the TWA PEL or STEL, to minimize the number of employees exposed to airborne beryllium and their level of exposure, including exposures generated by other employers or sole proprietors.	Add a new requirement, paragraph (f)(1)(i)(E), to list procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment.
§ 1926.1124(h)(2)(v)—Personal Protective Clothing and Equipment—Removal and Storage.	When personal protective clothing or equipment required by this standard is removed from the workplace for laundering, cleaning, maintenance or disposal, the employer must ensure that personal protective clothing and equipment are stored and transported in sealed bags or other closed containers that are impermeable and are labeled in accordance with paragraph (m)(3) of the standard and the HCS (29 CFR 1910.1200).	Remove this labeling requirement from the beryllium standard for construction and therefore from the ICR.
§ 1926.1124(h)(3)(iii) —Personal Protective Clothing and Equipment—Cleaning and Replacement.	The employer must inform in writing the persons or the business entities who launder, clean or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of airborne exposure to and dermal contact with beryllium and that the personal protective clothing and equipment must be handled in accordance with the standard.	Remove this requirement from the beryllium standard for construction and therefore from the ICR.
§ 1926.1124(k)(7)—Medical Surveillance— Referral to the CBD Diagnostic Center.	The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The examination must be provided within 30 days of either of the events in paragraph (k)(7)(i)(A) or (B).	Add an initial consultation with the CBD diagnostic center, as follows: The employer must also provide, at no cost to the employee and within a reasonable time after the initial consultation with the CBD diagnostic center, any of the following tests if deemed appropriate by the examining physician at the CBD diagnostic center: pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The initial consultation with the CBD diagnostic center must be provided within 30 days of either of the events in paragraph (k)(7)(i)(A) or (B).
§ 1926.1124(n)(1)(ii)(F)—Recordkeeping —Air Monitoring Data.	The name, social security number, and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.	Remove the requirement to collect and record social security numbers, as follows: The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.
§ 1926.1124(n)(3) (ii)(A)— Recordkeeping— Medical Surveillance.	The record must include the following information about the employee: Name, social security number, and job classification.	Remove the requirement to collect and record social security numbers, as follows: The record must include the following information about the employee: Name and job classification.

TABLE VI.1—COLLECTION OF INFORMATION REQUIREMENTS BEING REVISED IN THE BERYLLIUM STANDARD FOR CONSTRUCTION—Continued

Section number and title	Currently approved collection of information requirements	Proposed action
§ 1926.1124(n)(4)(i)—Recordkeeping—Training.	At the completion of any training required by the standard, the employer must prepare a record that indicates the name, social security number, and job classification of each employee trained, the date the training was completed, and the topic of the training.	Remove the requirement to collect and record social security numbers, as follows: At the completion of any training required by the standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

4. *OMB Control Number:* 1218–0NEW.

5. *Affected Public:* Business or other-for-profit. This standard applies to employers in the construction industry who have employees that may have occupational exposures to any form of beryllium, including compounds and mixtures, except those articles and materials exempted by paragraphs (a)(2) and (3) of the standard.

6. *Number of Respondents:* 2,520.

7. *Frequency of Responses:* On occasion; quarterly, semi-annually, annual; biannual.

8. *Number of Reponses:* 29,330.

9. *Average Time per Response:* Various.

10. *Estimated Annual Total Burden Hours:* 18,075.

11. *Estimated Annual Total Cost (Capital-operation and maintenance):* $5,611,902.

Shipyards (ICR):

1. *Title:* Occupational Exposure to Beryllium for the Shipyards Sector.

2. *Description of the ICR:* The proposal would separate the shipyards standards from the currently approved Beryllium ICR and remove existing collection of information requirements currently approved by OMB.

3. *Brief Summary of the Information Collection Requirements:*

The proposed standard for occupational exposure to beryllium and beryllium compounds in shipyards would revise the collection of information requirements contained in the existing ICR for that industry, approved under OMB under control number 1218–0267. OSHA is proposing, first, to separate the shipyards collection of information requirements from those of the general industry and construction standards, and requests a new control number specific to the shipyards standard (1218–0NEW2). Next, OSHA is proposing to update the new ICR to reflect its proposal to (1) remove provisions in the shipyards standard that require employers to collect and record employees' social security number; (2) revise the contents of the written exposure control plan; and (3) remove certain requirements related to written warnings. See Table VI.2.

TABLE VI.2—COLLECTION OF INFORMATION REQUIREMENTS BEING REVISED IN THE BERYLLIUM STANDARD FOR SHIPYARDS

Section number and title	Currently approved collection of information requirements	Proposed action
§ 1915.1024(f)(1)(i)—Methods of Compliance—Written Exposure Control Plan.	The employer must establish, implement, and maintain a written exposure control plan, which must contain: • A list of operations and job titles reasonably expected to involve exposure to or dermal contact with beryllium; • A list of operations and job titles reasonably expected to involve airborne exposure at or above the AL; • A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL; • Procedures for minimizing cross-contamination; • Procedures for minimizing the migration of beryllium within or to locations outside the workplace; • A list of engineering controls, work practices, and respiratory protection required by paragraph (f)(2) of the standard; • A list of personal protective clothing and equipment required by paragraph (h) of the standard; and • Procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators;	Remove paragraphs (f)(1)(i)(B) through (E) and (H), the written exposure control plan. Revise paragraph (f)(1)(i)(A) to list operations and job titles reasonably expected to involve exposure to beryllium. Add a new requirement, paragraph (f)(1)(i)(D) to list procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment.

TABLE VI.2—COLLECTION OF INFORMATION REQUIREMENTS BEING REVISED IN THE BERYLLIUM STANDARD FOR SHIPYARDS—Continued

Section number and title	Currently approved collection of information requirements	Proposed action
§ 1915.1024(h)(2)(v)—Personal Protective Clothing and Equipment—Removal and Storage.	When personal protective clothing or equipment required by this standard is removed from the workplace for laundering, cleaning, maintenance or disposal, the employer must ensure that personal protective clothing and equipment are stored and transported in sealed bags or other closed containers that are impermeable and are labeled in accordance with paragraph (m)(3) of the standard and the HCS (29 CFR 1910.1200).	Remove this labeling requirement from the beryllium standard for shipyards and therefore from the ICR.
§ 1915.1024(h)(3)(iii) —Personal Protective Clothing and Equipment—Cleaning and Replacement.	The employer must inform in writing the persons or the business entities who launder, clean or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of airborne exposure to and dermal contact with beryllium and that the personal protective clothing and equipment must be handled in accordance with the standard.	Remove this requirement from the beryllium standard for shipyards and therefore from the ICR.
§ 1915.1024(k)(7)—Medical Surveillance— Referral to the CBD Diagnostic Center.	The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The examination must be provided within 30 days of either the events in paragraph (k)(7)(i)(A) or (B).	Add an initial consultation with the CBD diagnostic center. Proposing: The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The employer must also provide, at no cost to the employee and within a reasonable time after the initial consultation with the CBD diagnostic center, any of the following tests if deemed appropriate by the examining physician at the CBD diagnostic center: pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The initial consultation with the CBD diagnostic center must be provided within 30 days of either the events in paragraph (k)(7)(i)(A) or (B).
§ 1915.1024(n)(1)(ii)(F)—Recordkeeping —Air Monitoring Data.	The name, social security number, and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.	Remove the requirement to collect and record social security numbers, as follows: The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.
§ 1915.1024(n)(3)(ii)(B)—Recordkeeping— Medical Surveillance.	The record must include the following information about the employee: Name, social security number, and job classification.	Remove the requirement to collect and record of social security numbers, as follows: Name and job classification.
§ 1915.1024(n)(4)(i)—Recordkeeping—Training.	At the completion of any training required by this standard, the employer must prepare a record that indicates the name, social security number, and job classification of each employee trained, the date the training was completed, and the topic of the training.	Remove the requirement to collect and record social security numbers, as follows: At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

4. *OMB Control Number:* 1218–NEW2.

5. *Affected Public:* Business or other-for-profit. This standard applies to employers in the shipyards industry who have employees that may have occupational exposures to any form of beryllium, including compounds and mixtures, except those articles and materials exempted by paragraphs (a)(2) and (3) of the standard.

6. *Number of Respondents:* 925.

7. *Frequency of Responses:* On occasion; quarterly, semi-annually, annual; biannual.

8. *Number of Reponses:* 10,794.

9. *Average Time per Response:* Various.

10. *Estimated Annual Total Burden Hours:* 6,609.

11. *Estimated Annual Total Cost (Capital-operation and maintenance):* $2,057,856.

D. Submitting Comments

In addition to the 30 days provided for public comment on this proposal, OSHA is providing an additional 30 days—for a total of *60 days* from the date this document is published in the **Federal Register**—for public comment on the information collection requirements contained in the proposed updates to the beryllium standards for construction and shipyards, as required by 5 CFR 1320.11(c).

Members of the public who wish to comment on the revisions to the paperwork requirements in this proposal must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA (RIN 1218–AD29), Office of Management and Budget, Room 10235,

Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.* The agency encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket (Docket Number OSHA–2019–0006), along with their comments on other parts of the proposed rule. For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** document titled **DATES** and **ADDRESSES**. Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security Numbers and dates of birth.

E. Docket and Inquiries

To access the docket to read or download comments and other materials related to this paperwork determination, including the complete ICR (containing the Supporting Statement with attachments describing the paperwork determinations in detail) use the procedures described under the section of this document titled **ADDRESSES**.

You also may obtain an electronic copy of the complete ICR by visiting the web page at: *http://www.reginfo.gov/public/do/PRAMain,* scroll under ''Currently Under Review'' to ''Department of Labor (DOL)'' to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Ms. Seleda Perryman, Directorate of Standards and Guidance, telephone (202) 693–2222.

VII. Federalism

OSHA reviewed this proposal in accordance with the Executive Order on Federalism (E.O. 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional and statutory authority exists and the problem is national in scope. E.O. 13132 provides for preemption of State law only with the expressed consent of Congress. Any such preemption is to be limited to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories as ''State Plan States'' (29 U.S.C. 667). Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State Plan States are free to develop and enforce under State law their own requirements for safety and health standards.

OSHA previously concluded that promulgation of the beryllium standard complies with E.O. 13132 (82 FR at 2633), so this proposal complies with E.O. 13132. In States without OSHA-approved State Plans, Congress expressly provides for OSHA standards to preempt State occupational safety and health standards in areas addressed by the Federal standards. In these States, this proposal would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking would not significantly limit State policy options.

VIII. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 28 States and U.S. territories with their own OSHA approved occupational safety and health plans (''State Plan States'') must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.,* because an existing State standard covering this area is ''at least as effective'' as the new Federal standard or amendment. 29 CFR 1953.5(a). The State standard must be at least as effective as the final Federal rule. State Plans must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States are not required to amend their standards, although the agency may encourage them to do so. The 28 States and U.S. territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

This proposal applies to the construction and shipyards industries. If adopted as proposed, the revised standards, in conjunction with other existing OSHA standards, would provide equivalent protection to the 2017 beryllium standards. Therefore, State Plan States whose current laws are at least as effective as the 2017 final rule would not have to revise these laws. State Plan States may nonetheless choose to conform to these proposed revisions if finalized.

IX. Unfunded Mandates Reform Act

OSHA reviewed this proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093). As discussed above in Section IV (''Preliminary Economic Analysis and Regulatory Flexibility Certification'') of this preamble, the agency preliminarily determined that this proposal would not impose significant additional costs on any private- or public-sector entity. Further, OSHA previously concluded that the rule would not impose a Federal mandate on the private sector in excess of $100 million (adjusted annually for inflation) in expenditures in any one year (82 FR at 2634). Accordingly, this proposal would not require significant additional expenditures by either public or private employers.

As noted above under Section VII (''State-Plan States''), the agency's standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the agency. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate'' (see Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the agency certifies that this proposal would not mandate that State, local, or Tribal governments adopt new, unfunded regulatory obligations of, or increase expenditures by the private sector by, more than $100 million in any year.

X. Environmental Impacts

OSHA has reviewed this proposed beryllium rule according to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). OSHA has made a preliminary determination that this proposed rule would have no significant impact on air,

water, or soil quality; plant or animal life; the use of land; or aspects of the external environment.

XI. Consultation and Coordination with Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with E.O. 13175 (65 FR 67249) and determined that it does not have ''tribal implications'' as defined in that order. This proposal does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Parts 1915 and 1926

Beryllium, Cancer, Chemicals, Hazardous substances, Health, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210.

The agency issues the sections under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3704; 33 U.S.C. 941; Secretary of Labor's Order 1–2012 (77 FR 3912 (1/25/2012)); and 29 CFR part 1911.

[Corrected]Signed at Washington, DC, on September 24, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons set forth in the preamble, chapter XVII of title 29, parts 1915 and 1926, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

■ 1. The authority citation for part 1915 continues to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

■ 2. Amend § 1915.1024 as follows:
■ a. In paragraph (b):
■ i. Add a definition for ''Beryllium sensitization'' in alphabetical order;
■ ii. Revise the definitions of ''CBD diagnostic center,'' ''Chronic beryllium disease (CBD),'' and ''Confirmed positive''; and
■ iii. Remove the definition of ''Emergency'';
■ b. Revise paragraph (f)(1)(i)(A);
■ c. Remove paragraphs (f)(1)(i)(B), (C), (D), (E), and (H);
■ d. Redesignate paragraphs (f)(1)(i)(F) and (G) as paragraphs (f)(1)(i)(B) and (C);
■ e. Add new paragraph (f)(1)(i)(D);
■ f. Revise paragraphs (f)(1)(ii)(B), (f)(2), and (g)(1)(iii);
■ g. Remove paragraph (g)(1)(iv);
■ h. Redesignate paragraph (g)(1)(v) as paragraph (g)(1)(iv);
■ i. Revise paragraphs (h)(1) introductory text and (h)(2)(i) and (ii);
■ j. Remove paragraphs (h)(2)(iii), (iv), and (v);
■ k. Revise paragraph (h)(3)(ii);
■ l. Remove paragraph (h)(3)(iii);
■ m. Remove and reserve paragraph (i);
■ n. Revise paragraphs (j) and (k)(1)(i)(B);
■ o. Remove paragraph (k)(1)(i)(C);
■ p. Redesignate paragraph (k)(1)(i)(D) as paragraph (k)(1)(i)(C);
■ q. Revise paragraph (k)(2)(i)(B), (k)(2)(ii), (k)(3)(ii)(A), (k)(4)(i), (k)(7)(i) introductory text, and (m)(1)(ii);
■ r. Remove paragraph (m)(3);
■ s. Redesignate paragraph (m)(4) as paragraph (m)(3);
■ t. Revise newly redesignated paragraphs (m)(3)(i) introductory text and (m)(3)(ii)(A);
■ u. Remove newly redesignated paragraph (m)(3)(ii)(D);
■ v. Further redesignate paragraphs (m)(3)(ii)(E) through (I) as paragraphs (m)(3)(ii)(D) through (H); and
■ w. Revise newly redesignated paragraph (m)(3)(ii)(D) and paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i).

The revisions and additions read as follows:

§ 1915.1024 Beryllium.

* * * * *

(b) * * *

Beryllium sensitization means a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop CBD, beryllium sensitization is essential for development of CBD.

CBD diagnostic center means a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours. The pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

Chronic beryllium disease (CBD) means a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium-sensitized.

Confirmed positive means the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results obtained within the 30-day follow-up test period required after a first abnormal or borderline BeLPT test result. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) A list of operations and job titles reasonably expected to involve exposure to beryllium;

* * * * *

(D) Procedures used to ensure the integrity of each containment used to minimize exposures to employees outside of the containment.

* * * * *

(ii) * * *

(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (l)(1) of this standard, referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with airborne exposure to beryllium; or

* * * * *

(2) *Engineering and work practice controls.* The employer must use engineering and work practice controls to reduce and maintain employee airborne exposure to beryllium to or below the TWA PEL and STEL, unless the employer can demonstrate that such controls are not feasible. Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs with engineering and work practice controls, the employer

must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls by using respiratory protection in accordance with paragraph (g) of this standard.

* * * * *

(g) * * *

(1) * * *

(iii) During operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL; and

* * * * *

(h) * * *

(1) *Provision and use.* Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, the employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under paragraph (f)(1) of this standard and OSHA's Personal Protective Equipment standards for shipyards (subpart I of this part):

* * * * *

(2) * * *

(i) The employer must ensure that each employee removes all personal protective clothing and equipment required by this standard at the end of the work shift or at the completion of all tasks involving beryllium, whichever comes first.

(ii) The employer must ensure that personal protective clothing and equipment required by this standard is not removed in a manner that disperses beryllium into the air.

(3) * * *

(ii) The employer must ensure that beryllium is not removed from personal protective clothing and equipment required by this standard by blowing, shaking or any other means that disperses beryllium into the air.

* * * * *

(j) *Housekeeping.* (1) When cleaning dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL, the employer must ensure the use of methods that minimize the likelihood and level of airborne exposure.

(2) The employer must not allow dry sweeping or brushing for cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL unless methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(3) The employer must not allow the use of compressed air for cleaning where the use of compressed air causes, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL.

(4) Where employees use dry sweeping, brushing, or compressed air to clean, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with paragraphs (g) and (h) of this standard.

(5) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the re-entrainment of airborne beryllium in the workplace.

(k) * * *

(1) * * *

(i) * * *

(B) Who shows signs or symptoms of CBD or other beryllium-related health effects; or

* * * * *

(2) * * *

(i) * * *

(B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard.

(ii) At least every two years thereafter for each employee who continues to meet the criteria of paragraph (k)(1)(i)(A), (B), or (C) of this standard.

* * * * *

(3) * * *

(ii) * * *

(A) A medical and work history, with emphasis on past and present exposure to beryllium, smoking history, and any history of respiratory system dysfunction;

* * * * *

(4) * * *

(i) A description of the employee's former and current duties that relate to the employee's exposure to beryllium;

* * * * *

(7) * * *

(i) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The employer must also provide, at no cost to the employee and within a reasonable time after the initial consultation with the CBD diagnostic center, any of the following tests if deemed appropriate by the examining physician at the CBD diagnostic center: pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The initial consultation with the CBD diagnostic center must be provided within 30 days of:

* * * * *

(m) * * *

(1) * * *

(ii) Employers must include beryllium in the hazard communication program established to comply with the HCS. Employers must ensure that each employee has access to labels on containers of beryllium and to safety data sheets, and is trained in accordance with the requirements of the HCS (29 CFR 1910.1200) and paragraph (m)(3) of this standard.

* * * * *

(3) * * *

(i) For each employee who has, or can reasonably be expected to have, airborne exposure to beryllium;

* * * * *

(ii) * * *

(A) The health hazards associated with exposure to beryllium, including the signs and symptoms of CBD;

* * * * *

(D) Measures employees can take to protect themselves from exposure to beryllium;

* * * * *

(n) * * *

(1) * * *

(ii) * * *

(F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

* * * * *

(3) * * *

(ii) * * *

(A) Name and job classification;

* * * * *

(4) * * *

(i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart Z—Toxic and Hazardous Substances

■ 3. The authority citation for subpart Z of part 1926 continues to read as follows:

Authority: 40 U.S.C. 3704; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

■ 4. Amend § 1926.1124 as follows:
■ a. In paragraph (b):
■ i. Add a definition for ''Beryllium sensitization'' in alphabetical order;
■ ii. Revise the definitions of ''CBD diagnostic center,'' ''Chronic beryllium disease (CBD),'' and ''Confirmed positive''; and
■ iii. Remove the definition of ''Emergency'';
■ b. Revise paragraph (f)(1)(i)(A);
■ c. Remove paragraphs (f)(1)(i)(B), (C), (D), (E), and (H);
■ d. Redesignate paragraphs (f)(1)(i)(F), (G), and (I) as paragraphs (f)(1)(i)(B), (C), and (D);
■ e. Remove the period at the end of newly redesignated paragraph (f)(1)(i)(D) and adding ''; and'' in its place;
■ f. Add new paragraph (f)(1)(i)(E);
■ g. Revise paragraphs (f)(1)(ii)(B), (f)(2), and (g)(1)(iii);
■ h. Remove paragraph (g)(1)(iv);
■ i. Redesignate paragraph (g)(1)(v) as paragraph (g)(1)(iv);
■ j. Revise paragraphs (h)(1) and (h)(2)(i) and (ii);
■ k. Remove paragraphs (h)(2)(iii), (iv), and (v);
■ l. Revise paragraph (h)(3)(ii);
■ m. Remove paragraph (h)(3)(iii);
■ n. Remove and reserve paragraph (i);
■ o. Revise paragraphs (j) and (k)(1)(i)(B);
■ p. Remove paragraph (k)(1)(i)(C);
■ q. Redesignate paragraph (k)(1)(i)(D) as paragraph (k)(1)(i)(C);
■ r. Revise paragraphs (k)(2)(i)(B), (k)(2)(ii), (k)(3)(ii)(A), (k)(4)(i), and (k)(7)(i) introductory text;
■ s. Remove paragraph (m)(2);
■ t. Redesignate paragraph (m)(3) as paragraph (m)(2);
■ u. Revise newly redesignated paragraphs (m)(2)(i) introductory text and (m)(2)(ii)(A);
■ v. Remove newly redesignated paragraph (m)(2)(ii)(D);
■ w. Further redesignate paragraphs (m)(2)(ii)(E) through (I) as paragraphs (m)(2)(ii)(D) through (H); and
■ x. Revise newly redesignated paragraph (m)(2)(ii)(D) and paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i).

The revisions and additions read as follows:

§ 1926.1124 Beryllium.

* * * * *

(b) * * *

Beryllium sensitization means a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop CBD, beryllium sensitization is essential for development of CBD.

CBD diagnostic center means a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours. The pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

Chronic beryllium disease (CBD) means a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium-sensitized.

* * * * *

Confirmed positive means the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results obtained within the 30-day follow-up test period required after a first abnormal or borderline BeLPT test result. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) A list of operations and job titles reasonably expected to involve exposure to beryllium;

* * * * *

(E) Procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment.

(ii) * * *

(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (l)(1) of this standard, referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with airborne exposure to beryllium; or

* * * * *

(2) *Engineering and work practice controls.* The employer must use engineering and work practice controls to reduce and maintain employee airborne exposure to beryllium to or below the TWA PEL and STEL, unless the employer can demonstrate that such controls are not feasible. Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs with engineering and work practice controls, the employer must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls by using respiratory protection in accordance with paragraph (g) of this standard.

* * * * *

(g) * * *

(1) * * *

(iii) During operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL; and

* * * * *

(h) * * *

(1) *Provision and use.* Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, the employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under paragraph (f)(1) of this standard and OSHA's Personal Protective and Life Saving Equipment standards for construction (subpart E of this part).

(2) * * *

(i) The employer must ensure that each employee removes all personal protective clothing and equipment required by this standard at the end of the work shift or at the completion of all tasks involving beryllium, whichever comes first.

(ii) The employer must ensure that personal protective clothing and equipment required by this standard is not removed in a manner that disperses beryllium into the air.

(3) * * *

(ii) The employer must ensure that beryllium is not removed from personal protective clothing and equipment required by this standard by blowing, shaking or any other means that disperses beryllium into the air.

* * * * *

(j) *Housekeeping.* (1) When cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the

TWA PEL or STEL, the employer must ensure the use of methods that minimize the likelihood and level of airborne exposure.

(2) The employer must not allow dry sweeping or brushing for cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL unless methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(3) The employer must not allow the use of compressed air for cleaning where the use of compressed air causes, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL.

(4) Where employees use dry sweeping, brushing, or compressed air to clean, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with paragraphs (g) and (h) of this standard.

(5) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the re-entrainment of airborne beryllium in the workplace.

(k) * * *

(1) * * *

(i) * * *

(B) Who shows signs or symptoms of CBD or other beryllium-related health effects; or

* * * * *

(2) * * *

(i) * * *

(B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard.

(ii) At least every two years thereafter for each employee who continues to meet the criteria of paragraph (k)(1)(i)(A), (B), or (C) of this standard.

* * * * *

(3) * * *

(ii) * * *

(A) A medical and work history, with emphasis on past and present exposure to beryllium, smoking history, and any history of respiratory system dysfunction;

* * * * *

(4) * * *

(i) A description of the employee's former and current duties that relate to the employee's exposure to beryllium;

* * * * *

(7) * * *

(i) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The employer must also provide, at no cost to the employee and within a reasonable time after the initial consultation with the CBD diagnostic center, any of the following tests if deemed appropriate by the examining physician at the CBD diagnostic center: pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The initial consultation with the CBD diagnostic center must be provided within 30 days of:

* * * * *

(m) * * *

(2) * * *

(i) For each employee who has, or can reasonably be expected to have, airborne exposure to beryllium:

* * * * *

(ii) * * *

(A) The health hazards associated with exposure to beryllium, including the signs and symptoms of CBD;

* * * * *

(D) Measures employees can take to protect themselves from exposure to beryllium;

* * * * *

(n) * * *

(1) * * *

(ii) * * *

(F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

* * * * *

(3) * * *

(ii) * * *

(A) Name and job classification;

* * * * *

(4) * * *

(i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

* * * * *

[FR Doc. 2019–21038 Filed 10–7–19; 8:45 am]

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FEDERAL REGISTER

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Part IV

Department of Labor

Wage and Hour Division

29 CFR Parts 10, 516, 531, et al.
Tip Regulations Under the Fair Labor Standards Act (FLSA); Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 10, 516, 531, 578, 579, and 580

RIN 1235–AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA)

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking; withdrawal of proposed rulemaking; request for comments.

SUMMARY: In the Consolidated Appropriations Act, 2018 (CAA), Congress amended section 3(m) of the Fair Labor Standards Act (FLSA) to prohibit employers from keeping tips received by their employees, regardless of whether the employers take a tip credit under section 3(m). In this Notice of Proposed Rulemaking (NPRM), the Department proposes to amend its tip regulations to address this Congressional action. The Department also proposes to codify policy regarding the tip credit's application to employees who performed tipped and non-tipped duties. This NPRM also withdraws the Department's December 5, 2017 NPRM proposing changes to the Department's tip regulations, as the CAA has superseded it.

DATES: Comments must be received on or before December 9, 2019.

The proposed rule Tip Regulations under the Fair Labor Standards Act, published December 5, 2017 at 82 FR 57395, is withdrawn as of October 8, 2019.

ADDRESSES: To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA21, by either of the following methods:

Electronic Comments: Follow the instructions for submitting comments on the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Address written submissions to Amy DeBisschop, Acting Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This NPRM is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via the Wage and Hour Division's (WHD) website at *http://www.dol.gov/whd/.* All comment submissions must include the agency name and Regulatory Information Number (RIN 1235–AA21) for this NPRM. Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this NPRM; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). Copies of this NPRM may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *http://www.dol.gov/whd/america2.htm* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FLSA generally requires covered employers to pay employees at least a Federal minimum wage, which is currently $7.25 per hour. *See* 29 U.S.C. 206(a)(1). Section 3(m) of the FLSA allows an employer that meets certain requirements to count a limited amount of the tips its ''tipped employees'' receive as a credit toward its Federal minimum wage obligation (known as a ''tip credit''). *See* 29 U.S.C. 203(m)(2)(A). An employer may take a tip credit only for ''tipped employees'', and only if, among other things, its tipped employees retain all their tips. *Id.* This requirement, however, does not preclude an employer that takes a tip credit from implementing a tip pool in which tips are shared only among those employees who ''customarily and regularly receive tips.'' *Id.*

In 2011, the Department revised its tip regulations to reflect its view at the time that the FLSA required that tipped employees retain all tips received by them, except for tips distributed through a tip pool limited to employees who customarily and regularly receive tips, regardless of whether their employer takes a tip credit. *See, e.g.,* 29 CFR 531.52. On December 5, 2017, the Department published an NPRM, 82 FR 57,395, which proposed to rescind the parts of its tip regulations that applied to employers that pay a direct cash wage of at least the full Federal minimum wage and do not take a tip credit.

On March 23, 2018, Congress amended section 3(m) of the FLSA in the CAA, Public Law 115–141, Div. S., Tit. XII, § 1201, 132 Stat. 348, 1148–49 (2018). Among other things, the CAA revised section 3(m) by renumbering the existing tip credit provision as section 3(m)(2)(A). Significantly, the CAA added a new section 3(m)(2)(B), which prohibits employers, whether or not they take a tip credit, from keeping their employees' tips ''for any purposes, including allowing managers or supervisors to keep any portion of employees' tips.'' The CAA amended sections 16(b) and 16(c) of the FLSA to permit private parties and the Department to recover any tips unlawfully kept by an employer in violation of section 3(m)(2)(B), in addition to an equal amount of liquidated damages. The CAA also amended section 16(e) of the FLSA to provide the Department discretion to impose civil money penalties (CMPs) up to $1,100 when employers unlawfully keep employee's tips.

Congress specified in the CAA that the portions of the 2011 final rule that ''are not addressed by section 3(m) . . .

(as such section was in effect on April 5, 2011), shall have no further force or effect until any future action taken by [the Department of Labor].'' As the Department explained in a Field Assistance Bulletin (FAB) published shortly thereafter, that statement applies to those portions of the Department's regulations at §§ 531.52, 531.54, and 531.59 that restricted tip pooling when employers pay tipped employees a direct cash wage of at least the full FLSA minimum wage and do not claim a tip credit. FAB No. 2018–3 (Apr. 6, 2018), available at *https://www.dol.gov/whd/FieldBulletins/fab2018_3.pdf.*

Because the Congressional amendments to the FLSA directly impacted the subject of the Department's 2017 NPRM, this document withdraws that proposal. This document also explains the impact of the 2018 CAA amendments on the Department's current tip pooling regulations. The CAA did not change the existing rules that apply to employers that take a tip credit, now in section 3(m)(2)(A) of the FLSA, which provide that such employers may institute a mandatory, ''traditional'' tip pool that is limited to employees who ''customarily and regularly'' receive tips. But the CAA did eliminate the regulatory restrictions on an employer's ability to require tip pooling when it does not take a tip credit: Such employers may now implement mandatory, ''nontraditional'' tip pools in which employees who do not customarily and regularly receive tips, such as cooks and dishwashers, may participate.

The CAA also created a new statutory provision, 3(m)(2)(B), which applies to all employers regardless of whether they take a tip credit, and provides that employers may not keep employees' tips and may not allow managers or supervisors to keep employees' tips. Among other things, this new statutory provision prohibits employers, managers, and supervisors from receiving employees' tips from any tip pooling arrangement. As explained further herein, section 3(m)(2)(B) also prohibits employers from operating tip pools in a manner such that they ''keep'' tips.

The Department is proposing to update its tip regulations to incorporate the CAA's amendments to the FLSA. Although the CAA renumbered the FLSA's existing tip credit provision as section 3(m)(2)(A), it did not substantively change that provision. Therefore, this rulemaking does not address the Department's existing regulations and guidance implementing 3(m)(2)(A) that apply to employers that take a tip credit unless it is necessary to clarify how those provisions relate to the statutory amendment. The Department is proposing to incorporate the new statutory provision, section 3(m)(2)(B)—which applies regardless of whether the employer takes a tip credit—into its existing regulations and is proposing to incorporate a new recordkeeping provision to assist the Department with its administration of that provision. The Department is additionally proposing, consistent with Congressional action, to remove the portions of its regulations that prohibited employers that pay their tipped employees a direct cash wage of at least the full Federal minimum wage and do not take a tip credit against their minimum wage obligations from including employees who do not customarily and regularly receive tips, such as cooks and dishwashers, in mandatory tip pooling arrangements. The Department is also proposing to amend its tip regulations to reflect recent guidance explaining that an employer may take a tip credit for any amount of time that an employee in a tipped occupation performs related, non-tipped duties contemporaneously with his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties. The proposed regulation would also address which non-tipped duties are related to a tip-producing occupation.

The Department is also proposing to incorporate the FLSA's new CMP provision into its existing regulations. Since the Department is proposing to revise its CMP regulations to reflect the statutory amendments, the Department also proposes to revise portions of its CMP regulations to address courts of appeals' decisions that have raised concerns that some of the regulations' statements regarding willful violations are inconsistent with Supreme Court authority and how the Department actually litigates willfulness.

Finally, the Department is proposing to amend the provisions of its regulations that address the payment of tipped employees under Executive Order 13658 (Establishing a Minimum Wage for Contractors) to reflect the rescissions proposed in the FLSA regulations for tipped employees, to incorporate the Department's guidance on when an employee performing non-tipped work is a tipped employee, and to otherwise align those regulations with the authority provided in the Executive Order.

The Department estimates the rule updating WHD's regulations to reflect the CAA amendments, if finalized as proposed, could result in a potential transfer of $107 million, as tip pools are expanded to share tips among both front-of-the-house and back-of-the-house employees. The directly-observable transfer would only occur among employees because section 3(m)(2)(B) prohibits employers from participating in these tip pools or otherwise keeping employee's tips. However, because back-of-the-house workers may now be receiving tips, employers may offset this increase in total compensation by reducing the direct wage that they pay back-of-the-house workers (as long as they do not reduce their wage below the applicable minimum wage). This could allow employers to capture some of the transfer. The Department estimates that regulatory familiarization costs associated with this proposed rule would be $3.86 million in the first year. For purposes of Executive Order 13771, it is expected that this proposed rule would, if finalized as proposed, qualify as a deregulatory action.

II. Background

A. Section 3(m)

As explained above, the FLSA generally requires covered employers to pay employees at least the Federal minimum wage, which is currently $7.25 per hour. Section 3(m) (now 3(m)(2)(A)) of the FLSA, however, permits an employer to count a limited amount of an employee's tips (up to $5.12 per hour) as a partial credit, called a ''tip credit,'' to satisfy the difference between the direct cash wage paid and the Federal minimum wage. This partial credit is known as a tip credit. An employer may take a tip credit only for a ''tipped employee,'' which section 3(t) of the FLSA defines as ''any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.'' In addition, an employer may take a tip credit under section 3(m)(2)(A) only if, among other things, the tipped employees retain all the tips they receive. An employer taking a tip credit is allowed, however, to implement a mandatory tip pool in which tips are shared only among employees who ''customarily and regularly receive tips.''

Section 3(m)(2)(B) of the FLSA, added through the CAA, provides that ''an employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips.'' *See* Div. S., Tit. XII, § 1201. Importantly, section 3(m)(2)(B) applies regardless of whether an employer takes a tip credit.

B. Statutory and Regulatory History

i. 1966 and 1974 Amendments to the FLSA [1]

Congress created the FLSA's tip credit provision within the definition of ''wages'' in section 3(m) in 1966. *See* Public Law 89–601, 101(a), 80 Stat. 830 (1966). In 1974, Congress amended section 3(m) to provide that an employer could not credit tips received by its employees toward its Federal minimum wage obligation unless, among other things:

> all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

Public Law 93–259, 13(e), 88 Stat. 55 (1974). As a result of the amendment, an employer that takes a tip credit can require a tipped employee to share tips with other employees in occupations in which they customarily and regularly receive tips, but it cannot use employees' tips for any other purpose or require tipped employees to share them with employees who do not customarily and regularly receive tips. As the text of the statute makes plain, Congress only intended to regulate employers who take a tip credit, stating that those employers cannot take employees' tips except to pool them among employees who customarily and regularly receive them. The text contains no indication that Congress intended to regulate employers who do not take a tip credit and who use tip pools for other purposes, such as by sharing tips with ''back of the house'' employees like cooks and dishwashers.

The Department promulgated its initial tip regulations in 1967, one year after Congress created the tip credit. *See* 32 FR 13,575 (Sept. 28, 1967). Consistent with the Department's understanding of the 1966 amendments, the 1967 tip regulations permitted agreements under which tips received by employees would be transferred to the employer. Immediately after the 1974 amendments, the Department's WHD stated in a number of opinion letters that its 1967 regulations were superseded to the extent they conflicted with those amendments. *See, e.g.,* WHD Opinion Letter WH–310, 1975 WL 40934 (Feb. 18, 1974), at *1.

[1] Congress amended section 3(m)'s tip credit provision three times between 1974 and 2018, in 1977, 1989, and 1996. These amendments changed only the applicable amount of tips received by employees that could be used as a credit against an employer's minimum wage obligations. *See* Public Law 95–151, 3(b), 91 Stat. 1245 (1977); Public Law 101–157, 5, 103 Stat. 938 (1989); Public Law 104–188, 2105(b), 110 Stat. 1755 (1996).

In 2010, the Ninth Circuit analyzed section 3(m) and observed that ''nothing in the text of the FLSA purports to restrict employee tip-pooling arrangements when no tip credit is taken.'' *Cumbie* v. *Woody Woo, Inc.,* 596 F.3d 577, 583 (9th Cir. 2010). The Ninth Circuit reasoned that section 3(m)'s ''plain text'' merely ''imposes *conditions* on taking a tip credit and does not state freestanding *requirements* pertaining to all tipped employees.'' *Id.* at 580–81. The contrary position, the court concluded, would render Section 203(m)'s ''reference to the tip credit, as well as its conditional language and structure, superfluous.'' *Id.* at 581. The court thus held that the employer, which did not take a tip credit, did not violate section 203(m) by requiring its tipped employees to contribute to a tip pool that included employees who were not customarily and regularly tipped. *See id.*

ii. 2011 Regulations

In 2011, however, the Department revised its 1967 tip regulations to reflect its view of the 1974 amendments to the FLSA. *See* 76 FR 18,832, 18,854–56 (Apr. 5, 2011). Notwithstanding the *Cumbie* decision, the 2011 regulations prohibited employers from, among other things, establishing mandatory tip pools that include employees who are not customarily and regularly tipped—regardless of whether employers took a tip credit. *See* 29 CFR 531.52 (2011) (''The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than that which is statutorily permitted in section 3(m): As a credit against its minimum wage obligations to the employee, or in furtherance of a valid tip pool.''); *see also* § 531.54 (providing that ''an employer . . . may not retain any of the employees' tips''); § 531.59 (''With the exception of tips contributed to a valid tip pool as described in § 531.54, the tip credit provisions of section 3(m) also require employers to permit employees to retain all tips received by the employee.''). The Department acknowledged that section 3(m) did not expressly address the use of an employee's tips when an employer does not take a tip credit and pays a direct cash wage equal to or greater than the Federal minimum wage, but stated that the regulation would fill a ''gap'' that the Department then believed to exist in the statutory scheme. 76 FR at 18,841–42.

Multiple lawsuits have involved challenges to the Department's authority under section 3(m) to regulate employers that pay a direct cash wage of at least the Federal minimum wage. The parties challenging the validity of the 2011 regulations argued, and courts ruling in favor of such parties have held, that the text of section 3(m) reflected Congress' intent to impose conditions only on employers that take a tip credit. *See, e.g., Trinidad* v. *Pret A Manger (USA) Ltd.,* 962 F. Supp. 2d 545, 562 (S.D.N.Y. 2013) (''Although the Court need not resolve this issue definitively . . . [it] finds Pret's argument more persuasive: The DOL regulations are contrary to the plain language of § 203(m).'').

On February 23, 2016, a divided Ninth Circuit panel upheld the validity of the 2011 regulations. *See Oregon Rest. & Lodging Ass'n (ORLA)* v. *Perez,* 816 F.3d 1080, 1090 (9th Cir. 2016). Although the Ninth Circuit declined *en banc* review of the decision, ten judges dissented on the ground that the FLSA authorized the Department to address tip pooling and tip retention only when an employer takes a tip credit. *See ORLA,* 843 F.3d 355, 356 (9th Cir. 2016) (O'Scannlain, J., dissenting from denial of reh'g en banc). The dissent noted the Ninth Circuit's decision in *Cumbie* that the FLSA ''clearly and unambiguously permits employers who forgo a tip credit to arrange their tip-pooling affairs however they see fit.'' *Id.* at 358 (citing *Cumbie,* 596 F.3d at 579 n.6, 581, 581 n.11, 582, 583). The dissent therefore concluded that ''because the Department has not been delegated authority to ban tip pooling by employers who forgo the tip credit, the Department's assertion of regulatory jurisdiction is manifestly contrary to the statute and exceeds its statutory authority.'' *Id.* at 363 (internal quotation marks omitted). On January 19, 2017, the National Restaurant Association, on behalf of itself and other *ORLA* plaintiffs, sought Supreme Court review. *See* Pet'n for Writ of Cert., *ORLA sub nom. Nat'l Rest. Ass'n* v. *U.S. DOL,* (Jan. 19, 2017) (No. 16–920).

On June 30, 2017, the Tenth Circuit ruled that the Department's 2011 tip regulations were invalid to the extent they barred an employer from using or sharing tips with employees who do not customarily and regularly receive tips when the employer pays a direct cash wage of at least the Federal minimum wage and does not take a section 3(m) tip credit. *See Marlow* v. *New Food Guy, Inc.,* 861 F.3d 1157, 1159 (10th Cir. 2017). The Tenth Circuit held that the text of the FLSA limits an employer's use of tips only when the employer takes a tip credit, ''leaving [the Department] without authority to regulate to the contrary.'' *See Marlow,* 861 F.3d at 1163–64.

On July 20, 2017, the Department adopted a nationwide ''nonenforcement policy'' under which the Department would ''not enforce'' the 2011 regulations in any context in which an employer pays its employees a direct cash wage of at least the Federal minimum wage. *See* 82 FR 57395, 57399 (Dec. 5, 2017).

On May 22, 2018, the government responded to the petition for certiorari in *ORLA,* then captioned as *Nat'l Rest. Ass'n (NRA) et al.* v. *Dept. of Labor et al,* explaining that the Department had reconsidered its defense of the 2011 regulations in light of the ten-judge dissent from denial of rehearing in *ORLA* and the Tenth Circuit's decision in *Marlow,* and that it believed that it had exceeded its statutory authority in promulgating the 2011 regulations as they apply to employers that do not take a tip credit against their Federal minimum wage obligations. The government explained that ''until the 2018 [congressional] amendments, Section 203(m) placed limits only on employers that took a tip credit,'' and that ''[n]either Section 203(m) nor any other provision of the FLSA prevents an employer that pays at least the minimum wage from instituting a nontraditional tip pool [that includes back-of-the-house employees like cooks and janitors] for employees' tips.'' Br. for the Respondents at 26–27, *NRA* (No. 16–920). On June 25, 2018, the Supreme Court denied the petition for certiorari.

iii. 2017 Notice of Proposed Rulemaking

On December 5, 2017, the Department published an NPRM proposing to rescind the portions of its 2011 tip regulations that imposed restrictions on employers that pay a direct cash wage of at least the full Federal minimum wage and do not take a tip credit against their minimum wage obligations. *See* 82 FR 57395 (Dec. 5, 2017). The Department issued the 2017 NPRM in part because of its concerns, in light of the *ORLA* rehearing dissent and the Tenth Circuit's decision in *Marlow,* that it had misconstrued the statute when it promulgated the 2011 regulations. 82 FR 57399. The Department stated that where ''an employer has paid a direct cash wage of at least the full Federal minimum wage and does not take the employee tips directly, a strong argument exists that the statutory protections of section 3(m) do not apply.'' 82 FR 57402. The Department also proposed allowing these employers to establish tip pools that include employees who contribute to the customers' experience but do not customarily and regularly receive tips—such as dishwashers or cooks. *See, e.g.,* 82 FR 57399.

A number of commenters on the NPRM supported allowing employers to establish these tip pools. Several commenters pointed out that these workers contribute to each customer's overall service, which directly affects the size of the customer's tip. Many commenters, however, expressed concern that without regulatory protections in place, an employer would take tips received by employees for its own purposes.

During a hearing on March 6, 2018, before the Subcommittee on Labor, Health and Human Services, and Education of the U.S. House of Representatives Committee on Appropriations, Secretary of Labor R. Alexander Acosta was asked about the proposed rulemaking. The Secretary explained that the Tenth Circuit had made clear in *Marlow,* in reasoning the Secretary found persuasive, that the Department lacked statutory authority for its 2011 regulations at issue, and that the Secretary had concluded that Congress has not authorized the Department to fully regulate in this space. The Secretary, however, explained that Congress had the authority to implement a solution, and he suggested that Congress enact legislation providing that establishments, whether or not they take a tip credit, may not keep any portion of employees' tips.[2]

C. The CAA's Amendments to the FLSA

On March 23, 2018, Congress amended the FLSA through the CAA to further address employers' practices with respect to their employees' tips. Public Law 115–141, Div. S., Tit. XII, sec. 1201. The Department issued a FAB that provided guidance concerning WHD enforcement of the CAA amendments on April 6, 2018. *See* FAB No. 2018–3 (Apr. 6, 2018).

i. Amendments to Section 3(m) of the FLSA

The CAA left unchanged the existing text of section 3(m), but recodified it as section 3(m)(2)(A). Thus, the CAA did not alter the FLSA's longstanding requirements that apply to employers that take a tip credit.

The CAA did, however, add new requirements for all employers. The CAA added a new section to the FLSA, 3(m)(2)(B). This provision expressly prohibits employers—regardless of whether they take a tip credit under section 3(m)—from keeping tips received by their employees, including by distributing them to managers or supervisors: ''An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.'' CAA, Div. S, Tit. XII, § 1201(a) (codified as amended at 29 U.S.C. 203(m)(2)(B)); *see* FAB No. 2018–3.

ii. Effect on Regulations

The CAA amendments also expressly addressed the portions of the Department's 2011 regulations that restricted tip pooling when employers pay tipped employees a direct cash wage of at least the full FLSA minimum wage and do not take a tip credit. CAA, Div. S, Tit. XII, § 1201(c). Section 1201(c) of the CAA provides that the portions of WHD's regulations at 29 CFR 531.52, 531.54, and 531.59 that were ''not addressed by section 3(m) . . . (as such section was in effect on April 5, 2011), shall have no further force or effect until any future action taken by [the Department of Labor].'' The Department explained in a FAB that this statutory language had the effect of depriving of any further force or effect the Department's existing regulations prohibiting employers that pay tipped employees the full Federal minimum wage from including back-of-the-house workers, such as cooks and dishwashers, in a tip pool. *See* FAB No. 2018–3.

iii. Amendments to Section 16 of the FLSA

The CAA also amended section 16(b) of the FLSA, which provides in part that an employee may sue for unpaid minimum wages or overtime compensation. The amendment to this provision states that ''[a]ny employer who violates section 3(m)(2)(B) shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages.'' CAA, Div. S, Tit. XII, sec. 1201(b)(1). The amendment thus permits employees to sue for double the sum of any tips illegally kept by their employer and the amount of any tip credit taken by such employer.

Section 16(c) of the FLSA authorizes the Department to enforce the proper payment of unpaid minimum wages and/or unpaid overtime compensation. The CAA amended section 16(c) by adding to the Department's enforcement authority: ''The authority and

[2] A recording of the testimony is available at: *https://www.congress.gov/committees/video/house-appropriations/hsap00/6Weo1vfNM1k.*

requirements described in this subsection shall apply with respect to a violation of section 3(m)(2)(B), as appropriate, and the employer shall be liable for the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and an additional equal amount as liquidated damages.'' CAA, Div. S, Tit. XII, sec. 1201(b)(2). Accordingly, when an employer unlawfully keeps an employee's tips in violation of section 3(m)(2)(B), the Department may recover on behalf of the employee the same doubled sum of any tips kept and tip credit taken by the employer.

Section 16(e)(2) provides that any person who repeatedly or willfully violates the minimum wage or overtime provisions of the FLSA shall be subject to a civil money penalty not to exceed $1,100 for each such violation.[3] The CAA amended this section to add: ''Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed $1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages[.]'' CAA, Div. S, Tit. XII, sec. 1201(b)(3). The amendment thus added a new civil money penalty for violations of section 3(m)(2)(B).

III. Withdrawal of the 2017 NPRM

As noted above, on December 5, 2017, the Department published an NPRM which proposed to rescind the parts of its tip regulations that applied to employers that pay a direct cash wage of at least the full Federal minimum wage and do not take a tip credit.

The CAA amendments to the statutory text of the FLSA, which were signed into law on March 23, 2018, directly impacted the subject of the 2017 proposed rulemaking—employers that pay at least the full Federal minimum wage and do not take a tip credit under section 3(m). For that reason, the Department is withdrawing the 2017 NPRM and is addressing the 2018 CAA amendments through this rulemaking.

IV. Section-by-Section Analysis of Proposed Regulatory Revisions

This section describes in detail the Department's proposed changes to its tip regulations to implement the CAA amendments and address other issues. As discussed above, the CAA amendments deprived of any further force or effect the portions of the Department's 2011 regulations that restricted tip pooling when employers pay tipped employees a direct cash wage of at least the full FLSA minimum wage and do not take a tip credit, until future action by the WHD Administrator. At the same time, the CAA amendments expressly prohibit employers from keeping tips received by their employees for any purposes, regardless of whether the employer takes a tip credit. Pursuant to section 1201(c) of the CAA amendments and consistent with its position articulated in the 2017 NPRM, the Department proposes to strike the portions of its current regulations that prohibit employers that pay their tipped employees a direct cash wage at least equal to the Federal minimum wage and do not take a tip credit from establishing mandatory tip pools with employees who do not customarily and regularly receive tips, such as dishwashers and cooks.

The Department also proposes to amend § 531.52 to implement newly added section 3(m)(2)(B), which prohibits employers—regardless of whether they take a tip credit—from keeping employees' tips for any purposes, including allowing managers and supervisors to keep the tips. The proposed regulation defines an individual who is a manager or supervisor, and therefore may not keep employees' tips under section 3(m)(2)(B), as an individual who meets the duties test at § 541.100(a)(2)–(4) or § 541.101.

The Department also proposes to amend § 531.54 to reflect the new statutory provision, section 3(m)(2)(B). Proposed § 531.54(b) clarifies that section 3(m)(2)(B)'s prohibition on keeping tips applies regardless of whether the employer takes a tip credit and precludes employers from including themselves, managers, and/or supervisors in employer-mandated tip pools. Proposed § 531.54(b) also explains that although section 3(m)(2)(B) prohibits employers from sharing employees' tips with supervisors, managers, and employers, an employer may institute a mandatory tip pool that requires employees to share or pool tips with other eligible employees. Proposed § 531.54(b) further provides that any employer that collects tips to facilitate a mandatory tip pool must fully redistribute the tips, no less often than when it pays wages, to avoid ''keep[ing]'' the tips in violation of section 3(m)(2)(B).

Proposed §§ 531.54(c) and (d) would also set forth the different tip pooling requirements for employers that take a tip credit and for those that do not. Because the CAA did not substantively amend the statutory requirements under 3(m)(2)(A) that apply to employers that take a tip credit, the Department does not propose to change its existing tip pooling requirements in § 531.54 that apply to those employers. Those existing requirements, in relevant part, state that employers can only require tipped employees to contribute tips to a ''traditional'' tip pool, comprised of employees who customarily and regularly receive tips. In contrast, under the CAA amendments, an employer that chooses not to take a tip credit may require tipped employees to contribute tips to a ''nontraditional'' pool that includes employees, such as dishwashers and cooks, who are not employed in an occupation in which employees customarily and regularly receive tips. The proposed regulation clarifies that an employer that requires such a tip pool must pay a direct cash wage of at least the full Federal minimum wage to any tipped employee who contributes tips to the pool.

The Department is also proposing to amend § 531.56(e) to reflect recent guidance that an employer may take a tip credit for time that an employee in a tipped occupation performs related, non-tipped duties contemporaneously with or a reasonable time immediately before or after performing the tipped duties. The proposed regulation would also address which non-tipped duties are related to a tip-producing occupation.

The Department additionally proposes incorporating into its regulations the CAA amendments that provide for civil money penalties for violations of section 3(m)(2)(B). Since the Department is proposing to revise its regulations to reflect this new CMP provision, which, as proposed, would apply only to repeated and willful violations, the Department also proposes to revise its existing CMP regulations to address courts of appeals' decisions that have raised concerns that some of the regulations' statements regarding willful violations are inconsistent with Supreme Court authority and how the Department actually litigates willfulness.

Finally, the Department proposes to amend the provisions of § 10.28, which addresses the payment of tipped employees under Executive Order 13658 (Establishing a Minimum Wage for Contractors), to make them consistent

[3] The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Publ. L. No. 114–74, sec. 701), requires that inflationary adjustments be made annually in these civil money penalties according to a specified cost-of-living formula.

with its proposed rescissions to the FLSA regulations, to remove similar restrictions on an employer's use of nontraditional tip pools, to otherwise align those regulations with the authority provided in the Executive Order, and to incorporate the Department's recent guidance on when an employee performing non-tipped work is a tipped employee.

The Department seeks public comment on these proposed regulatory changes. The Department asks commenters to define in their comments any terms they use to describe practices regarding tips. This NPRM uses the term ''tip pooling'' to describe any scenario in which a tip provided by a customer is shared, in whole or in part, among employees. The Department recognizes, however, that in some workplaces or under state laws, the term ''tip pooling'' may refer to a narrower set of practices, and that employers and workers may use other terms—for example ''tip out,'' ''tip sharing,'' or ''tip jar''—to describe certain practices regarding tips.

A. Rescission of Portions of Sections 531.52, 531.54, and 531.59

As noted above, section 1201(c) of the CAA provides that the portions of the Department's regulations at 29 CFR 531.52, 531.54, and 531.59 that were ''not addressed by section 3(m)'' ''shall have no further force or effect[.]'' CAA, Div. S, Tit. XII, sec. 1201(c). This statutory language deprives of any further force or effect the portions of §§ 531.52, 531.54, and 531.59 that impose restrictions on an employer's use of employees' tips when the employer does not take a tip credit. As the Department explained in its FAB, under the CAA amendments, employers that do not take a tip credit may now establish mandatory tip pools that include employees who do not customarily and regularly receive tips, such as back-of-the-house workers like cooks and dishwashers. *See* FAB No. 2018–3. Section 1201(c) of the CAA did not impact the portions of §§ 531.52, 531.54, and 531.59 that apply to employers that do take a tip credit.

Consistent with the statutory language, as well as the Department's statements in the 2017 NPRM,[4] the Department proposes to rescind the language in § 531.52 that bars employers from establishing mandatory tip pools that include employees who are not customarily and regularly tipped, ''whether or not it takes a tip credit,'' and to make additional minor clarifying edits; to revise §§ 531.54 to clarify that the restrictions and notice requirements for tip pools apply only to employers that take a tip credit; and to revise § 531.59 to provide that the bar on including employees who are not customarily and regularly tipped in a mandatory tip pool applies only to employers that take a tip credit.

B. Proposed Section 531.52—General Restrictions on an Employer's Use of Its Employees' Tips

i. An Employer May Not Keep Tips, Regardless of Whether It Takes a Tip Credit

Section 3(m)(2)(B) prohibits an employer, regardless of whether it takes a tip credit, from ''keeping'' tips received by its employees ''for any purposes, including allowing managers and supervisors to keep any portion of employees' tips.'' Under the amended statute, an employer does not ''keep'' employees' tips in violation of section 3(m)(2)(B) merely by requiring an employee who receives a tip to share it with other eligible employees who also contributed to the service provided to the customer. In those circumstances, the employees, not the employer, keep the tips. Section 3(m)(2)(B), however, prohibits an employer from using its employees' tips for any other purpose. An employer would ''keep'' tips, for example, by using tips to cover its own general operating expenses, using tips to pay for capital improvements, or directing the tips to an individual who is not an employee, such as a vendor. This is true for tips provided through a credit card transaction, as well as for cash tips. The Department proposes to amend § 531.52 to include the new statutory language prohibiting an employer from keeping employees' tips, and to clarify that an employer may exert control over employees' tips only to distribute tips to the employee who received them, require employees to share tips with other eligible employees, or, where the employer facilitates tip pooling by collecting and redistributing employees' tips, distribute tips to employees in a tip pool.

The statutory language prohibits an ''employer'' from ''keep[ing] tips received by its employees.'' The term ''employer'' is defined in section 3(d) of the FLSA to mean ''any person [or entity] acting directly or indirectly in the interest of an employer in relation to an employee . . . .'' Therefore, a person or entity that meets the definition of a section 3(d) employer may not keep or receive tips from a tip pool.

ii. Managers and Supervisors May Not Keep Tips

As explained above, section 3(m)(2)(B) prohibits employers, regardless of whether they take a tip credit, from keeping tips, ''including allowing managers or supervisors to keep any portion of employees' tips.'' 29 U.S.C. 203(m)(2)(B). This prohibition applies to managers or supervisors obtaining employees' tips directly or indirectly, such as via a tip pool. The Department's current enforcement policy under FAB No. 2018–3 is to use the duties test under the executive employee exemption of FLSA section 13(a)(1), as defined at 29 CFR 541.100(a)(2)–(4), to determine whether an employee is a manager or supervisor for purposes of section 3(m)(2)(B).

Proposed § 531.52 would reflect this policy. Because an employee who satisfies the executive duties test manages and supervises other employees, the test effectively identifies those employees whom Congress sought to preclude from keeping tips. The Department does not propose to use the salary requirements at § 541.100(a)(1) to help determine whether an employee is a manager or supervisor for purposes of section 3(m)(2)(B). Accordingly, this proposal would interpret the terms ''manager'' and ''supervisor'' under section 3(m)(2)(b) more broadly—and to encompass more employees—than the term ''executive'' as used in Section 13(a)(1).

Sections 541.100(a)(2)–(4) provide that a manager or supervisor satisfies the duties test of the executive employee exemption if (1) the employee's primary duty is managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (*see* § 541.100(a)(2)); (2) the employee customarily and regularly directs the work of at least two or more other full-time employees or their equivalent (*see* § 541.100(a)(3)); and (3) the employee has the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight (*see* § 541.100(a)(4)). In addition, an employee who owns at least a bona fide 20-percent equity interest in the enterprise in which she is employed, regardless of the type of business organization (*e.g.,* corporation, partnership, or other), and who is

[4] As explained above, the government's brief in response to the petition for certiorari in the *NRA* litigation explained that the Department had reconsidered its defense of the 2011 regulations, and that it believed that it had exceeded its statutory authority in promulgating the 2011 regulations as they apply to employers that do not take a tip credit against their Federal minimum wage obligations.

actively engaged in its management, as defined under 29 CFR 541.101, would be considered a manager or supervisor for purposes of section 3(m)(2)(B). The Department believes that these well-established criteria would effectively identify employees who manage or supervise other employees and therefore those whom Congress sought to prevent from keeping other employees' tips. The Department additionally believes that employers can readily use these criteria to determine whether an employee is a manager or supervisor for purposes of section 3(m)(2)(B) because employers are generally familiar with these longstanding regulations. Moreover, the Department's staff is highly trained, and has extensive experience, in applying and enforcing these longstanding regulations.

The Department requests comments regarding whether other criteria may also be appropriate to determine whether an employee is a manager or supervisor for purposes of section 3(m)(2)(B), particularly in the varied situations where tipping is common.

C. Proposed Section 531.54—Tip Pooling

The Department also proposes to amend § 531.54, which generally addresses tip pooling, to reflect the CAA amendments. Proposed § 531.54 incorporates section 3(m)(2)(B)'s prohibition on employers keeping tips, including allowing managers or supervisors to keep employees' tips. This prohibition applies regardless of whether the employer takes a tip credit, and therefore governs any employer that facilitates or operates a mandatory tip pool. Proposed § 531.54 also contains other specific requirements for employers that establish mandatory tip pools, depending on whether they include employees who do not customarily and regularly receive tips.

i. Requirements When an Employer Collects and Redistributes Tips

The Department recognizes that employers operate a variety of tip pooling and tip sharing arrangements and that some employers may wish to pool tips received by one set of employees and redistribute them to another. Section 3(m)(2)(B) does not prohibit an employer from doing so, as long as the employer fully redistributes the tips no less often than when it pays wages. In those circumstances, the employees' tips are only temporarily within the employer's possession, and the employer does not ''keep'' the tips. When an employer collects employees' tips but fails to distribute them within this time period, however, and instead holds the tips, the employer ''keeps'' them in violation of section 3(m)(2)(B). For example, an employer may not maintain a reserve of collected tips from one pay period to pay out in a subsequent pay period.

Proposed § 531.54(b)(1) provides that an employer that collects tips to administer a tip pool must fully distribute any tips the employer collects at the regular payday for the workweek, or when the pay period covers more than a single workweek, at the regular payday for the period in which the particular workweek ends. To the extent that it is not possible for an employer to ascertain the amount of tips received or how tips should be distributed prior to processing payroll, the proposed rule requires the distribution of those tips to employees as soon as practicable after the regular payday. Thus, for a two-week pay period, an employer must fully distribute any tips the employer collects during those two weeks on the regular payday for that period, or to the extent that it is not possible to ascertain the amount or distribution of the tips, as soon as possible following that payday. This proposed requirement aligns with the Department's current guidance on how soon an employer must provide tips charged on credit cards to tipped employees. *See* WHD Field Operations Handbook (FOH) 30d05.

Because the proposal defines ''keep'' within the meaning of section 3(m)(2)(B), the proposed requirement that an employer fully and promptly distribute any tips it collects would apply regardless of whether the employer takes a tip credit, and regardless of whether the employer requires employees to participate in a ''traditional'' tip pool or in a ''nontraditional'' tip pool.

The Department requests comments on this proposed requirement, and requests information about how this requirement might affect employers' current practices for administering tip pools and tip distribution.

ii. Additional Requirements for Mandatory Tip Pools When an Employer Takes a Tip Credit

Current § 531.54 provides that an employer, regardless of whether it takes a tip credit, may only require its tipped employees to share tips with other employees who customarily and regularly receive tips. The employer also must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose. Although, as discussed above, the CAA amendments deprived of any further force or effect these regulatory tip pooling requirements as they apply to employers that do not take a tip credit, the CAA did not affect these requirements as they apply to employers that do take a tip credit. Therefore, proposed § 531.54(c) retains these requirements but clarifies that they apply only to employers that take a tip credit.

iii. Conditions Under Which an Employer May Mandate Participation in a Nontraditional Tip Pool

As explained above, as a result of the CAA amendments to the FLSA, employers that do not take a tip credit may now require tipped employees to participate in nontraditional tip pools that include employees who do not customarily and regularly receive tips, such as cooks and dishwashers, so long as the pools do not include employers, managers, or supervisors. Proposed § 531.54(d) implements these conditions.

As explained above, the CAA did not substantively amend the FLSA's existing tip credit provision, which states that employers may only take a tip credit against their minimum wage obligations to employees who are employed in an occupation in which they customarily and regularly receive tips, such as bussers and servers, and that employers that take a tip credit may only require tip pooling among such employees. *See* 29 U.S.C. 203(m)(2)(A). Over the years, the Department has developed guidance for itself on how to identify customarily and regularly tipped employees. *See, e.g.,* WHD Opinion Letter FLSA 2009–12, 2009 WL 649014 (Jan. 15, 2009); WHD Opinion Letter FLSA 2008–18, 2008 WL 5483058 (Dec. 19, 2008); WHD FOH 30d04(b), (f) (listing occupations that do, and do not, meet these criteria). This guidance is based in large part on the legislative history of the FLSA's tip credit provision. *See* S. Rep. No. 93–690, at 43 (1974).[5] According to this guidance, employers may not take a tip credit for back-of-the-house employees who receive tips through a tip pool because those employees are not employed in an occupation in which they customarily and regularly receive tips. Similarly, employers may not include those non-customarily and regularly tipped employees in a traditional section 3(m)(2)(A) tip pool.

[5] Since the CAA did not change the FLSA's existing tip credit provision, that guidance is still applicable to an employer that takes a tip credit.

D. Proposed Section 516.28—Recordkeeping Requirements for Employers That Have Employees Who Receive Tips

The Department is proposing revisions to the recordkeeping requirements in § 516.28 to provide consistent and effective administration of section 3(m)(2)(B) of the FLSA. Section 516.28 imposes certain recordkeeping requirements on only those employers that take a tip credit. Among other things, § 516.28(a) requires that the employer identify each employee for whom the employer takes a tip credit (*see* § 516.28(a)(1)) and maintain records regarding the weekly or monthly amount of tips received, as reported by the employee to the employer (*see* § 516.28(a)(2)). The employer may use information on IRS Form 4070 (Employee's Report of Tips to Employer) to satisfy the requirements under § 516.28(a)(2).[6]

The Department proposes to apply similar recordkeeping requirements for employers that do not take a tip credit but still collect employees' tips to operate a mandatory tip pool. Proposed § 516.28(b)(1) would require these employers to identify on their payroll records each employee who receives tips. Proposed § 516.28(b)(2) would require employers that do not take a tip credit but that collect tips to operate a mandatory tip pool to keep records of the weekly or monthly amount of tips received by each employee as reported by the employee to the employer (this may consist of reports from the employees to the employer on IRS Form 4070). The proposed recordkeeping requirements would help the Department determine whether employers are complying with their tip pooling obligations. The Department requests comments on these proposed requirements.

E. Proposed Section 531.56(e)—Dual Jobs

The Department proposes to amend § 531.56(e) to reflect recent guidance, which addresses whether an employer can take a tip credit for the time that a tipped employee spends performing duties in a tipped occupation that do not produce tips. Section 3(t) of the FLSA defines a ''tipped employee'' for whom an employer may take a tip credit under section 3(m) as ''any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.'' 29 U.S.C. 203(t). Current § 531.56(e) recognizes that an employee may be employed both in a tipped occupation and in a non-tipped occupation, providing that in such a ''dual jobs'' situation, the employee is a ''tipped employee'' for purposes of section 3(t) only while he or she is employed in the tipped occupation, and that an employer may only take a tip credit against its minimum wage obligations for the time the employee spends in that tipped occupation. In addition to addressing dual jobs, the current regulation also recognizes that an employee in a tipped occupation may perform related duties that are ''themselves not directed toward producing tips,'' such as, for example, a server ''who spends part of her time'' performing non-tipped duties, such as ''cleaning and setting tables, toasting bread, making coffee, and occasionally washing dishes or glasses.'' The regulation distinguishes this situation, in which the employee is still engaged in the tipped occupation of serving, from a dual jobs situation, in which the employee is engaged part of the time in a non-tipped occupation. 29 CFR 531.56(e).

The Department has in the past provided enforcement guidance on whether and to what extent an employer can take a tip credit for a tipped employee who is performing non-tipped duties related to the tipped occupation. Previously, the Department advised that an employer may not take a tip credit for the time an employee spent performing related duties that do not produce tips if that time exceeded 20 percent of the employee's workweek. However, this policy was difficult for employers to administer and led to confusion, in part because employers lacked guidance to determine whether a particular non-tipped duty is ''related'' to the tip-producing occupation. One court described it as ''infeasible,'' observing that the policy would ''present a discovery nightmare'' and require employers to ''keep the employee under perpetual surveillance or require them to maintain precise time logs accounting for every minute of their shifts.'' *Pellon* v. *Bus. Representation Int'l, Inc.,* 528 F. Supp. 2d 1306, 1314 (S.D. Fla. 2007), *aff'd,* 291 F. App'x 310 (11th Cir. 2008). The Department believes that such a situation would help neither employer nor employee. *See* WHD Opinion Letter FLSA 2018–27, 2018 WL 5921455, at *3 (Nov. 8, 2018).

In November 2018, the Department issued an opinion letter addressing these issues.[7] The Department subsequently issued a FAB and revised its Field Operations Handbook (FOH) to reflect the interpretation of related duties in the opinion letter. *See* FAB 2019–2 (Feb. 15, 2019); WHD FOH 30d00(f). In these guidance documents, the Department explained that it would no longer prohibit an employer from taking a tip credit for the time an employee performs related, non-tipped duties—as long as those duties are performed contemporaneously with, or for a reasonable time immediately before or after, tipped duties. *See* FAB 2019–2, at *2 (Feb. 15, 2019) (''[Section] 531.56(e) includes non-tipped duties in the tip credit unless they are unrelated to the tipped occupation or part of a separate, non-tipped occupation in a 'dual job' scenario. Accordingly, an employer may take a tip credit for any duties that an employee performs in a tipped occupation that are related to that occupation and either performed contemporaneous with the tip-producing activities or for a reasonable time immediately before or after the tipped activities.''); *see also* WHD FOH 30d00(f) WHD Opinion Letter FLSA2018–27, 2018 WL 5921455, at *3–4 (Nov. 8, 2018). The Department believes this policy is consistent with the plain statutory text, which permits employers to take a tip credit based on whether an employee is engaged in a tipped ''occupation,'' not on whether the employee is performing certain kinds of duties within the tipped occupation.

In its recent guidance, the Department also explained that, in addition to the examples listed in 531.56(e), it would use the Occupational Information Network (O*NET) to determine whether a tipped employee's non-tipped duties are related to their tipped occupation. O*NET is a comprehensive database of worker attributes and job characteristics, and is available to the public online at *www.onetonline.com.* O*NET includes information on work activities for over 900 occupations based on the Standard Occupational Classification system, a statistical standard used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.

The Department is proposing to revise § 531.56(e) to reflect the guidance on related duties in the recent opinion letter, FAB, and FOH revisions. Proposed § 531.56(e) would retain current language on dual jobs providing that when an individual is employed in

[6] For information regarding IRS Form 4070, see *https://www.irs.gov/pub/irs-access/f4070_accessible.pdf.*

[7] The Department had provided the same guidance initially in WHD Opinion Letter FLSA2009–23, which was issued on January 16, 2009 and was withdrawn on March 2, 2009 ''for further consideration.''

a tipped occupation and a non-tipped occupation, the tip credit is available only for the hours the employee spends working in the tipped occupation. It would also continue to distinguish such a dual jobs scenario from one in which an employee performs duties that are related to her tipped occupation but not themselves directed toward producing tips. The proposed regulation would clarify that an employer may take a tip credit for any amount of time that an employee performs related, non-tipped duties contemporaneously with his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties. Proposed § 531.56(e) would also provide that, in addition to the examples listed in the regulation, a non-tipped duty is related to a tip-producing occupation if the duty is listed as a task of the tip-producing occupation in the Occupational Information Network (O*NET).

The Department requests comments on these proposed changes to § 531.56(e). The Department is particularly interested in comments on how to identify related duties for occupations that may qualify as tipped occupations, but which lack a description in the O*NET database, perhaps because they are newly emerging. In its enforcement guidance, the Department has stated that when an O*NET description does not exist for an occupation, the Department will consider any duties usually and customarily performed by employees in that occupation to be related duties so long as the duties are consistent with the related duties for similar occupations listed in O*NET.

F. Proposed Parts 578, 579, and 580—Civil Money Penalties

Section 1201(b)(3) of the CAA amended FLSA section 16(e)(2) by adding a new penalty provision: ''Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed $1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages, as described in subsection (b).''

The CAA thus provides the Department with discretion to impose CMPs up to $1,100[8] when employers unlawfully keep employee tips, including when they allow managers or supervisors to keep any portion of employees' tips. *See* 29 U.S.C. 203(m)(2)(B). In assessing CMPs for violations of section 3(m)(2)(B) under amended section 16(e)(2), the Department proposes to follow the same guidelines and procedures that it follows for assessing CMPs for violation of the minimum wage (section 6) and overtime (section 7) provisions of the FLSA, and to issue CMPs only when it determines there has been a willful or repeated violation of section 3(m)(2)(B). The Department has been assessing CMPs for repeated or willful violations of the minimum wage and overtime provisions of the FLSA using the guidelines in part 578 and procedures in part 580 for nearly three decades. As such, employers are generally familiar with these regulations, and the Department's staff and Administrative Law Judges have experience applying them.

Part 578 of the Department's regulations (§§ 578.1–578.4) sets out the criteria the Department uses when determining whether a minimum wage or overtime violation is repeated or willful and thus subject to a CMP, as well as the amount of any CMP it assesses, and part 580 (§§ 580.1–580.18) sets out the procedures for assessing and contesting CMPs. Additionally, § 579.1(a) lists the maximum allowable CMPs for violations of the FLSA's child labor, minimum wage, and overtime provisions. *See* 29 CFR 579.1. The Department proposes to revise § 578.1 to provide that section 1201 of the CAA authorizes the Department to issue CMPs for violations of section 3(m)(2)(B); to revise § 578.3(a)(1) to provide that any person who willfully or repeatedly violates section 3(m)(2)(B) shall be subject to a CMP not to exceed $1,100 (as adjusted for inflation under the IAA); to revise §§ 578.3(b)–(c) to provide that the Department will use the criteria therein to determine whether an employer's violation of section 3(m)(2)(B) is repeated or willful and thus subject to a civil penalty; and to revise § 578.4 to provide that the Department will determine the amount of the penalty for repeated or willful violations of section 3(m)(2)(B) according to the guidelines set forth in that section. The Department proposes to revise §§ 579.1(a) and 579.1(a)(2) to provide that, consistent with the CAA amendments, any person who willfully or repeatedly violates section 3(m)(2)(B) shall be subject to a CMP not to exceed $1,100. Additionally, the Department proposes to revise §§ 580.2, 580.3, 580.12, and 580.18 to provide that the assessment of civil penalties for violations of section 3(m)(2)(B) shall be governed by the rules and procedures set forth therein. Finally, the Department proposes additional, nonsubstantive changes to § 578.1 to better reflect the history of amendments to the civil money penalty for violations of section 6 (minimum wage) and section 7 (overtime) of the Act.

Since the Department is proposing to revise parts 578 and 579 to reflect the new CMP provision that the CAA added to the FLSA, the Department also proposes to revise §§ 578.3(c)(2) and (3), and identical language in § 579.2, to address courts of appeals' concerns that some of the regulations' statements regarding willful violations are inconsistent with Supreme Court authority and how the Department actually litigates willfulness.

When it initially promulgated § 578.3(c) to provide guidance for assessing CMPs for violations of the FLSA's minimum wage or overtime pay requirements, the Department based its definition of a ''willful'' violation on the Supreme Court's decision in *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128 (1988). *See* 57 FR 49,129 (Oct. 29, 1992). In *Richland Shoe,* the Supreme Court held that a violation is willful if the employer ''knew or showed reckless disregard'' for whether its conduct was prohibited by the FLSA. 486 U.S. at 133. Section 578.3(c)(1) incorporates this holding and provides that ''[a]ll of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.'' Section 578.3(c)(2) provides that ''an employer's conduct shall be deemed knowing'' if the employer received advice from the WHD that its conduct is unlawful. Section 578.3(c)(3) provides that ''an employer's conduct shall be deemed to be in reckless disregard'' of the FLSA's requirements if the employer should have inquired further into whether its conduct complied with the FLSA and failed to make adequate further inquiry.

An appellate court has identified an ''incongruity'' between §§ 578.3(c)(2) and (3) and ''the *Richland Shoe* standard on which the regulation is based.'' *Baystate Alt. Staffing, Inc.* v. *Herman,* 163 F.3d 668, 680 (1st Cir. 1998). The court expressed ''significant reservations about [§ 578.3(c)(2)'s] blanket assertion that a party's decision not to comply with [WHD's] advice constitutes a 'knowing' violation'' under *Richland Shoe. Id.* The court further stated that § 578.3(c)(3) ''by its terms—specifically, that a party 'should have inquired further' about the legality of its conduct—embraces a negligence standard of liability,'' which *Richland Shoe* ''expressly rejected.'' *Id.* at 680–81

[8] This number is adjusted by inflation annually as required by the authorities in footnote 5 of this NPRM.

(citing 486 U.S. at 133–35). Describing §§ 578.3(c)(2) and (3) as ''incomplete'' and ''unhelpful,'' the court urged the Department ''to reconsider [them] to ensure that they comport with the Court's reading of . . . 'willful' in *Richland Shoe*.'' *Id.* at 681 n.16.

In several cases addressing this issue, the Department has argued that advice from WHD to an employer that its conduct was unlawful ''would not necessarily be dispositive of willfulness'' in a future enforcement action, and that the employer would have the opportunity ''to contest the assertion that the violation was willful notwithstanding its receipt of such advice.'' *See, e.g.,* Br. for Appellee at 22–23, *Rhea Lana, Inc.* v. *DOL,* 824 F.3d 1023 (DC Cir. 2016) (No. 15–5014), 2015 WL 4052846, at *22–23. The Department stated that § 578.3(c)(2) ''simply reflects the commonsense principle that, in the absence of persuasive and relevant evidence presented by an employer, notice from the agency of a FLSA violation may be used to establish willfulness,'' and that such notice is ''but one piece of evidence.'' *Id.* at 26. In *Rhea Lana,* the court did not reject outright the Department's reading of § 578.3(c), but pointed out that it was possible to read the regulation as ''a stand-alone trigger for willfulness penalties'' in a future enforcement action against the employer. 824 F.3d at 1031–32.

In light of *Baystate, Rhea Lana,* and § 578.3(c)(1)'s command that ''[a]ll of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful,'' the Department proposes to revise §§ 578.3(c)(2) and (3) to clarify that no single fact or circumstance is automatically dispositive as to willfulness to the exclusion of consideration of all other facts and circumstances. Revising §§ 578.3(c)(2) and (3) as proposed would ensure consistency between the regulation and how the Department litigates and briefs the issue of willfulness under the FLSA; resolve concerns that the regulation is inconsistent with *Richland Shoe*; and provide greater clarity to the regulated community regarding the standard for willfulness under the FLSA, including by specifying that no one fact or circumstance will preclude an employer from arguing that its conduct was not willful. To ensure consistent guidance regarding willful violations, the Department proposes to similarly revise identical language in § 579.2 addressing the proper assessment of CMPs for willful violations of the FLSA's child labor provisions.

G. Additional Proposed Regulatory Revisions

Section 531.50 currently sets forth the provisions of the FLSA that apply to tips and tipped employees. The Department proposes to revise § 531.50 to reflect the language that the CAA added to the FLSA. The Department also proposes to update §§ 531.50, 531.51, 531.52, 531.55, 531.56, 531.59, and 531.60 to reflect the new statutory citation to the FLSA's existing tip credit provision, previously cited as section 3(m), as section 3(m)(2)(A). The Department also proposes to clarify references in §§ 531.56(d), 531.59(a) and (b), and 531.60 to the amount an employer can take as a tip credit under section 3(m) (now 3(m)(2)(A)). The Department's regulations currently state that the an employer can take a tip credit for each employee equal to the difference between the minimum wage required by section 6(a)(1) of the FLSA (currently $7.25 an hour) and $2.13 an hour. To ensure that the Department's regulations clearly state employers' obligations under the FLSA, the Department proposes to revise §§ 531.56(d), 531.59(a) and (b), and 531.60 to provide, consistent with the text of the statute, that the tip credit permitted by section 3(m)(2)(A) is equal to the difference between the Federal minimum wage and the cash wage paid by the employer. That cash wage must be at least $2.13 per hour, but the statute does not preclude an employer from paying more.

Finally, the Department proposes to amend the tip provisions of its Executive Order 13658 regulations. Executive Order 13658 raised the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts. The Executive Order also established a tip credit for workers covered by the Order who are tipped employees pursuant to section 3(t) of the FLSA. Section 4(c) of the Executive Order encourages the Department, when promulgating regulations under that Order, to incorporate existing ''definitions, procedures, remedies, and enforcement processes'' from a number of laws that the agency enforces, including the FLSA. The Department's current Executive Order 13658 regulations are modeled after the Department's current FLSA tip regulations, and prohibit covered employers from implementing tip pools that include employees who are not customarily and regularly tipped. The Department proposes to amend § 10.28, consistent with its proposed rescissions to portions of the Department's FLSA regulations, to remove similar restrictions on an employer's use of such tip pools and to otherwise align those regulations with the authority provided in the Executive Order. Federal contractors covered by the FLSA would, of course, also be subject to the FLSA regulations proposed herein. The Department also proposes to amend § 10.28, consistent with its proposed revisions to § 531.56(e), to reflect its current guidance on when an employee performing non-tipped work constitutes a tipped employee for the purposes of 3(t).

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule.[9] Persons are not required to respond to the information collection requirements until the Office of Management and Budget (OMB) approves them under the PRA. This NPRM would revise the existing information collection burden estimates previously approved under OMB control number 1235–0018 (Records to be Kept by Employers—Fair Labor Standards Act) because employers may choose to pay the full Federal minimum wage and not take a tip credit, and collect tips to operate an employer-required, mandatory tip pooling arrangement, thereby triggering the recordkeeping requirement in proposed § 516.28(b). The Department has opened OMB control number 1235–0NEW for this action. As the PRA requires, the Department has submitted the information collection revisions to OMB for review to reflect changes that would result from this proposed rule. The Department proposes a slight burden increase for employers keeping records concerning employees who receive tips, as well as a regulatory familiarization burden.

Summary: FLSA section 11(c) requires covered employers to make, keep, and preserve records of employees and their wages, hours, and other conditions of employment, as prescribed by regulation. The Department's regulations at 29 CFR part 516 establish the basic FLSA

[9] *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8.

recordkeeping requirements. Section 516.28(a) currently requires employers to keep certain records concerning tipped employees for whom the employer takes a tip credit under the FLSA. Among other things, § 516.28(a) requires that the employer identify each employee for whom the employer takes a tip credit, identify the hourly tip credit for each such employee, and maintain records regarding the weekly or monthly amount of tips received (which may consist of IRS Form 4070) as reported by the employee to the employer. The adoption of proposed § 516.28(b)(1) and (b)(2) would require an employer that does not take a tip credit, but that collects employees' tips to operate a mandatory tip pooling arrangement, to indicate on its pay records each employee who receives tips and to maintain records of the weekly or monthly amount of tips that each such employee receives (this may consist of reports that the employees make to the employer on IRS Form 4070). The increase in the number of respondents and, accordingly, the burden hours associated with records to be kept under the proposed § 516.28(b)(1)–(2), is attributable to an expanding economy increasing the number of establishments employing individuals who receive tips since the last PRA revision of this recordkeeping requirement.

Purpose and Use: WHD and employees use employer records to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document compliance with the FLSA, and in the case of this NPRM, the Department would use the records regarding employees who receive tips to determine compliance with sections 3(m)(2)(A) and 3(m)(2)(B).

Technology: The regulations prescribe no particular order or form of records, and employers may preserve records in forms of their choosing, provided that facilities are available for inspection and transcription of the records.

Minimizing Small Entity Burden: Although the FLSA recordkeeping requirements do involve small businesses, including small state and local government agencies, the Department minimizes respondent burden by requiring no specific order or form of records in responding to this information collection.

Public Comments: As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and money) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department seeks public comments regarding the burdens imposed by the information collections associated with this NPRM. Commenters may send their views about this information collection to the Department in the same manner as all other comments (*e.g.,* through the regulations.gov website). All comments received will be made a matter of public record and posted without change to *http://www.regulations.gov* and *http://www.reginfo.gov,* including any personal information provided.

As previously noted, an agency may not conduct an information collection unless it has a currently valid OMB approval, and the Department has submitted information-collection requests under OMB control number 1235–0NEW to update them to reflect this rulemaking and provide interested parties a specific opportunity to comment under the PRA. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. Interested parties may receive a copy of the full supporting statement by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications may be addressed to OMB. Comments to OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. OMB will consider all written comments that the agency receives within 30 days of publication of this proposed rule. Commenters are encouraged, but not required, to send the Department a courtesy copy of any comments sent to OMB. The courtesy copy may be sent via the same channels as comments on the rule.

The Department is particularly interested in comments that:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Total annual burden estimates, which reflect both the existing and new responses for the recordkeeping information collection, are summarized as follows:

Type of Review: Revision of a currently approved collection.

Agency: Wage and Hour Division, Department of Labor.

Title: Records to be Kept by Employers—Fair Labor Standards Act.

OMB Control Number: 1235–0NEW.

Affected Public: Private Sector: businesses or other for-profits, farms, and not-for-profit institutions: State, Local and Tribal governments; and individuals or households.

Estimated Number of Respondents: 3,860,288 (102,994 from this rulemaking).

Estimated Number of Responses: 43,799,221 (248,032 from this rulemaking).

Estimated Burden Hours: 1,007,512 hours (24,593 from this rulemaking).

Estimated Time per Response: Various (unaffected by this rulemaking).

Frequency: Various (unaffected by this rulemaking).

Other Burden Cost: $0.

VI. Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improved Regulation and Regulatory Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

A. Introduction

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[10] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a

[10] 58 FR 51735 (Sept. 30, 1993).

rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because the annual effect of this proposed rule would be greater than $100 million, this proposed rule would be economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected the approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This proposed rule is expected to be an Executive Order 13771 deregulatory action, because it provides more flexibility to employers in structuring their employee tip pools. Details on the estimated costs and transfers, as well as qualitative discussions of cost savings of this proposed rule, can be found in the economic analysis below. The unquantified cost savings are expected to outweigh the quantified costs. Cost savings include reduced turnover of back-of-the-house employees, greater flexibility for tip pooling, and reduced effort spent ensuring that the tip pool is limited to only customarily and regularly tipped employees.

B. Economic Analysis

i. Introduction

In March 2018, Congress amended section 3(m) and sections 16(b), (c), and (e) of the FLSA to prohibit employers from keeping their employees' tips, to permit recovery of tips that an employer unlawfully keeps, and suspend the operations of the portions of the 2011 final rule that restricted tip pooling when employers do not take a tip credit. This analysis examines the economic impact associated with the Department's proposed implementation of those amendments, specifically the transfers resulting from employers that do not claim a tip credit and previously did not have a mandatory tip pool, or that only had a traditional tip pool limited to ''front-of-the-house'' employees (*i.e.,* servers and bartenders) implementing a nontraditional tip pool that includes ''back-of-the-house'' employees (*i.e.,* janitors, chefs, dishwashers, and food-preparation workers). Thus, a transfer of tip income will occur from ''front-of-the-house'' employees. The Department also quantified rule familiarization costs and qualitatively discusses additional costs, cost savings, and benefits. To perform this analysis, the Department compares the impact relative to a pre-statutory baseline (*i.e.,* before Congress amended the FLSA in March 2018). If the Department were to look at economic impacts relative to a post-statutory baseline, there would likely be no impact aside from rule familiarization costs, as the transfers arise from the changes put forth in the statute.

The Department is also proposing to amend its regulations to reflect guidance which provides that an employer may take a tip credit for any amount of time that an employee in a tipped occupation performs related, non-tipped duties contemporaneously with his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties. This interpretation was promulgated in a November 2018 opinion letter and subsequent FAB, and reflects WHD's enforcement position. As explained below, the Department lacks data to quantify any potential costs, benefits, or transfers which may be associated with the implementation of this policy; therefore, the Department discusses potential costs, benefits, and transfers qualitatively. The Department welcomes comments on the impact of this proposal, including data on employers' responses to the codification of this policy.

The economic analysis covers employees in two industries and in two occupations within those industries. The two industries are classified under the North American Industry Classification System (NAICS) as 722410 (Drinking Places (Alcoholic Beverages)) and 722511 (Full-service Restaurants); referred to in this analysis as ''restaurants and drinking places.'' The two occupations are classified under Bureau of Labor Statistics (BLS) Standard Occupational Classification (SOC) codes SOC 35–3031 (Waiters and Waitresses) and SOC 35–3011 (Bartenders).[11] The Department considered these two occupations because they constitute a large percentage of total tipped workers and a large percentage of the workers in these occupations receive tips (see Table 1 for shares of workers in these employees who may receive tips). The Department understands that there are other occupations beyond servers and bartenders with tipped workers, such as SOC 35–9011 (Dining room and Cafeteria Attendants and Bartender Helpers), SOC 35–9031 (Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop), and others, as well as other industries that employ workers who receive tips, such as NAICS 722515 (snack and nonalcoholic beverage bars), NAICS 722513 (limited service restaurants), NAICS 721110 (hotels and motels), and NAICS 713210 (casinos); thus, the Department welcomes comments and suggestions on whether this analysis should extend to such occupations and industries.

The analysis covers ten years to ensure that it captures major costs and transfers. When summarizing the costs and transfers of the proposed rule, the Department presents the first year's impact, as well as the 10-year annualized costs and transfers with 3 percent and 7 percent discounting.[12]

ii. Estimated Transfers

Under the regulations proposed in this NPRM, transfers would arise when employers that already pay the full Federal minimum wage and previously did not have a mandatory tip pool or only had a traditional tip pool institute nontraditional tip pools in which tipped employees such as servers and bartenders are required to share tips with employees who do not customarily and regularly receive tips, such as cooks and dishwashers. The Department believes that including back-of-the-house workers in tip pools could help equalize income among the employees within the establishment, and could also help promote cooperation and collaboration among employees. Because the statute prohibits employers from keeping employee tips, directly-observable transfers will only occur

[11] In the Current Population Survey, these occupations correspond to Bartenders (Census Code 4040) and Waiters and Waitresses (Census Code 4110). The industries correspond to Restaurants and Other Food Services (Census Code 8680) and Drinking Places, Alcoholic Beverages (Census Code 8690).

[12] Discount rates are directed by OMB. *See* Circular A–4, OMB (Sept. 17, 2003).

among employees. However, because back-of-the-house workers could now be receiving tips, employers may offset this increase in total compensation by reducing the direct wage that they pay back-of-the-house workers (as long as they do not reduce these employees' wages below the applicable minimum wage); offsets of this type are implied in the model underlying the quantitative estimates below. To the extent that wages are sticky in the short run, back-of-the-house employees are recipients of transfers, but across a longer time horizon, market adjustments increasingly allow employers to capture the transfer.

The analysis assumes that employers will institute nontraditional tip pools with employees who do not customarily and regularly receive tips only in situations that are beneficial to them. Accordingly, it assumes that employers will include back-of-the-house employees in their tip pools only if they believe that they can do so without losing their front-of-the-house staff. To attract and retain the tipped workers that they need, employers must pay these workers as much as their ''outside option,'' or the hourly earnings that they could receive in a non-tipped job with a similar skill level requirement to their current position. For each tipped worker, the Department assumes a transfer will occur only if their total earnings, including tips, is greater than the predicted outside-option wage from a non-tipped job. This methodology was informed by comments submitted as part of the Department's 2017 NPRM that discussed using outside options to determine potential transfer of tips.

The transfer calculation excludes any workers who are paid a direct cash wage below the full FLSA minimum wage of $7.25, because under the amended statute and the Department's proposed rule, employers who do take a tip credit are still subject to section 3(m)(2)(A)'s restrictions on tip pools. Some employers may begin paying their tipped workers a direct cash wage of at least the full FLSA minimum wage in order to institute a tip pool with back-of-the-house workers. This potential transfer is not quantified due to uncertainty regarding how many employers would choose to no longer use the tip credit. Choosing to no longer take a tip credit would require a change to employers' payroll systems and methods of compensation to which employers and employers are accustomed, which could discourage employers from making this change. The Department requests comments on the prevalence of this adjustment.

The transfer calculation also excludes any workers who are paid a direct cash wage by their employers, exclusive of any tips received, that exceeds the applicable minimum wage (either the Federal or applicable State minimum wage). The Department assumes that because these employers are already paying more than required under applicable law for these workers, any reduction in compensation would result in these workers leaving that employment. These employees will therefore not have their tips redistributed through a nontraditional tip pool. The Department requests comments and data on this assumption.

The Department does not attempt to definitively interpret individual state law; it is assumed, however, that some wait staff and bartenders work in a state that either prohibits mandatory tip pooling or imposes stricter limits on who can participate in a mandatory tip pool than are proposed in this NPRM,[13] or in a state that is in the Tenth Circuit [14] where, as a result of *Marlow* v. *New Food Guy, Inc.,* 861 F.3d at 1159, employers that do not take a tip credit were already permitted to institute nontraditional tip pools at the time Congress amended the FLSA. The transfer estimate excludes tipped employees in these states whom the changes proposed in this NPRM may not affect—amounting to about 43 percent of a $0.5 billion intermediate estimate of the potential transfer amount.[15] Thus, the Department first determined total transfers for all wait staff and bartenders using the methodology described above. The Department then excluded workers whom the proposed changes will not affect due to their respective state laws. The Department welcomes comments with more information regarding the effects of this proposed rule in specific states. Finally, the Department further reduced the total transfer amount to account for the fact that an uncertain number of employers will decline to change their tip pooling practices even when it is seemingly economically beneficial for them to do so because it will require changes to practices to which employees are accustomed, as well as payroll and recordkeeping changes.

To compute potential tip transfers, the Department used individual-level microdata from the 2017 Current Population Survey (CPS), a monthly survey of about 60,000 households that is jointly sponsored by the U.S. Census Bureau and BLS. Households are surveyed for four months, excluded from the survey for eight months, surveyed for an additional four months, and then permanently dropped from the sample. During the last month of each rotation in the sample (month 4 and month 16), employed respondents complete a supplementary questionnaire in addition to the regular survey. These households and questions form the CPS Merged Outgoing Rotation Group (CPS–MORG) and provide more detailed information about those surveyed.[16] The Department used 2017 CPS data to calculate the transfer because the CAA went into effect in March 2018. Although 2018 CPS data is available, 2017 is the most recent full year of data that is prior to the statutory change. In this analysis, 2017 wage data are inflated to $2018 using the GDP deflator. For purposes of rule familiarization costs, the Department used the most recent year of data (2018) to reflect employers reading the rule after it is published.

The CPS asks respondents whether they usually receive overtime pay, tips, and commissions (OTTC), which allows the Department to estimate the number of bartenders and wait staff in restaurants and drinking places who receive tips.[17] CPS data are not available

[13] *See, e.g.,* Minn. Stat. § 177.24, subd. 3 (''No employer may require an employee to contribute or share a gratuity received by the employee with the employer or other employees or to contribute any or all of the gratuity to a fund or pool operated for the benefit of the employer or employees.''); Mass. Gen. Laws ch. 149, § 152A(c) (''No employer or person shall cause, require or permit any wait staff employee, service employee, or service bartender to participate in a tip pool through which such employee remits any wage, tip or service charge, or any portion thereof, for distribution to any person who is not a wait staff employee, service employee, or service bartender.'')

[14] The jurisdiction of the Tenth Circuit includes the six states of Oklahoma, Kansas, New Mexico, Colorado, Wyoming, and Utah. *See* About Us, The United States Court of Appeals for the Tenth Circuit, *https://www.ca10.uscourts.gov/clerk* (last visited May 9, 2019).

[15] Arkansas, California, Colorado, Delaware, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Utah, and Wyoming.

[16] *See* Current Population Survey, U.S. Census Bureau, *https://www.census.gov/programs-surveys/cps.html* (last visited August 13, 2019); CPS Merged Outgoing Rotation Groups, NBER, *http://www.nber.org/data/morg.html* (last visited August 13, 2019).

[17] This question is only asked of hourly employees and consequently nonhourly workers are excluded from the transfer estimate. The Department did not quantify transfers from nonhourly workers because without knowing the prevalence of tipped income among nonhourly workers, the Department cannot accurately estimate potential transfers from these workers. However, the Department believes the transfer from nonhourly workers will be small because only 13 percent of wait staff and bartenders in restaurants and drinking places are nonhourly and the Department believes nonhourly workers may have a lower probability of receiving tips.

separately for overtime pay, tips, and commissions, but the Department assumes very few bartenders and wait staff at restaurants and drinking places receive commissions, and the number who receive overtime pay but not tips is also assumed to be minimal.[18] Therefore, when bartenders and wait staff responded affirmatively to this question, the Department assumed that they receive tips.

All data tables in this analysis include estimates for the year 2017 as the baseline. Table 1 presents the estimates of the share of bartenders and wait staff in restaurants and drinking places who reported that they usually earned OTTC in 2017. Approximately 64 percent of bartenders and 55 percent of wait staff reported usually earning OTTC in 2017. These numbers include workers in all states, including states whom the changes proposed in this NPRM may not affect. These numbers also include workers who are paid a direct cash wage below the full FLSA minimum wage of $7.25 (*i.e.,* employers whose employers are using a tip credit). Both these populations are excluded from the transfer calculation.

TABLE 1—SHARE OF BARTENDERS AND WAITERS/WAITRESSES IN RESTAURANTS AND DRINKING PLACES WHO EARNED OVERTIME PAY, TIPS, OR COMMISSIONS

Occupation	Total workers (millions)	Workers responding to question on OTTC (millions)	Report Earning OTTC	
			Workers (millions)	Percent
Total	2.21	1.92	1.08	56.5
Bartenders	0.34	0.27	0.17	63.5
Waiters/Waitresses	1.88	1.65	0.91	55.4

Source: CEPR, 2017 CPS–MORG.
Occupations: Bartenders (Census Code 4040) and Waiters and Waitresses (Census Code 4110).
Industries: Restaurants and other food services (Census Code 8680) and Drinking places, alcoholic beverages (Census Code 8690).

Of the 1.08 million bartenders and wait staff who receive OTTC, only 688,000 reported the amount received in OTTC. Therefore, the Department imputed OTTC for those workers who did not report the amount received in OTTC. As shown in Table 2, 54 percent of bartenders' earnings (an average of $276 per week) and 49 percent of waiters' and waitresses' earnings (an average of $234 per week) were from overtime pay, tips, and commissions in 2017. For workers who reported receiving tips but did not report the amount, the ratio of OTTC to total earnings for the sample who reported their OTTC amounts (54 or 49 percent) was applied to their weekly total income to estimate weekly tips. Nonhourly workers, who are not asked the question on receipt of OTTC, are assumed to not be tipped employees.

TABLE 2—PORTION OF INCOME FROM OVERTIME PAY, TIPS, AND COMMISSIONS FOR BARTENDERS AND WAITERS/WAITRESSES IN RESTAURANTS AND DRINKING PLACES

Occupation	Those who report the amount earned in OTTC			
	Workers	Average weekly earnings	Average weekly OTTC	Percent of earnings attributable to OTTC
Total	688,171	$478.34	$240.15	50%
Bartenders	105,787	512.29	275.65	54
Waiters and waitresses	582,384	472.17	233.71	49

Source: CEPR, 2017 CPS–MORG, inflated to $2018 using the GDP deflator.
Occupations: Bartenders (Census Code 4040) and Waiters and Waitresses (Census Code 4110).
Industries: Restaurants and other food services (Census Code 8680) and Drinking places, alcoholic beverages (Census Code 8690).

1. Outside-Option Wage Calculation

As discussed above, to determine potential transfers of tips, the Department assumes that employers will only redistribute tips from tipped employees to employees who are not customarily and regularly tipped in a nontraditional tip pool if the tipped employee's total earnings, including the tips the employee retains, are greater than the ''outside-option wage'' that the tipped employee could earn in a non-tipped job. To model a worker's outside-option wage, the Department used robust quartile regression analysis to predict the wage that these workers would earn in a non-tipped job. Hourly wage was regressed on age, age squared, age cubed, education, gender, race, ethnicity, citizenship, marital status, veteran status, metro area status and state for a sample of non-tipped workers.[19] The Department restricted the regression sample to workers earning at least the Federal minimum wage of $7.25 per hour (inclusive of OTTC), and those who are employed. This analysis excludes states where the law prohibits non-tipped back-of-the-house employees from being included in the tip pool, and states governed by the *Marlow* decision were also excluded from the regression analysis.

[18] According to BLS Current Population Survey data, in 2017, workers in service occupations worked an average of 35 hours per week. *See https://www.bls.gov/cps/aa2017/cpsaat23.htm.*

[19] For workers who had missing values for one or more of these explanatory variables we imputed the missing value as the average value for tipped/non-tipped workers.

In calculating the outside-option wage for tipped workers, the Department defined the comparator sample for tipped workers in two different ways: (1) All non-tipped workers (*i.e.,* workers who are either not waiters/waitresses or bartenders, or do not work in restaurants or drinking places), and (2) Non-tipped workers in a set of occupations that are likely to represent outside options. The Department determined the list of relevant occupations by exploring the similarity between the knowledge, activities, skills, and abilities required by the occupation to that of servers and bartenders. The Department searched the Occupational Information Network (O*NET) system for occupations that share important similarities with waiters and waitresses and bartenders—the occupations had to require ''customer and personal service'' knowledge and ''service orientation'' skills.[20] The list was further reduced by eliminating occupations that are not comparable to the waitress and bartender occupations in terms of education and training, as waiter and waitress and bartender occupations do not require formal education or training. *See* Appendix Table 1 for a list of these occupations. The transfer estimates presented in this analysis use this sample of limited occupations to predict each tipped worker's outside-option wage, that is, the wage that the tipped worker could earn in a non-tipped job. The Department also ran the regression to predict the outside-option wage using all non-tipped workers as the outside-option sample, and found that transfers are approximately 30 percent lower in that specification.

The regression calculates a distribution of outside-option wages for each worker. The Department considered two methods: (1) Using the 50th percentile and (2) using the same percentile for each worker as they currently earn in the distribution of wages for wait staff and bartenders in restaurants and drinking places in the state where they live.[21] The second method accounts for the fact that two workers may have the exact same characteristics (age, race, education, etc.), but one worker may have a higher or lower outside-option wage because he or she is a more or less effective employee. This method assumes that a worker's position in the wage distribution for wait staff and bartenders in restaurants and drinking places reflects their position in the wage distribution for the outside-option occupations. The Department believes this method is more appropriate than the 50th percentile method.[22]

2. Transfer Calculation

After determining each tipped worker's outside-option wage, the Department calculated the potential transferrable tips as the lesser of the following four numbers:

1. The positive differential between a worker's current earnings (wage plus tips) and their predicted outside-option wage,

2. The positive differential between a worker's current earnings and the state minimum wage,

3. The total tips earned by the worker, or

4. Zero if the worker currently earns a direct cash wage above the full applicable minimum wage.

The second number is included for cases where the outside-option wage predicted by the analysis is below the state minimum wage, because the worker will not earn less than their applicable state minimum wage. The third number is included because the maximum potential tips that can be transferred from an employee cannot be greater than their total tips. Total tips for each worker were calculated from the OTTC variable in the CPS data. For hourly-paid workers, the Department subtracted predicted overtime pay to better estimate total tips.[23] For workers who reported receiving overtime, tips, and commissions, but did not report the amount they earned, the Department applied the ratio of tipped earnings to total earnings for all waiters and waitresses and bartenders in their state (see Table 2).

The Department set the transfer to zero if the worker currently earns a direct cash wage above the full applicable minimum wage. If the employer is paying a tipped employee a direct cash wage above the required full minimum wage, this indicates the wage is set at the market clearing wage and any reduction in the wage (*e.g.,* by requiring tips to be transferred to back-of-the-house workers) would cause the employee to quit and look for other work. Therefore, where an employer is paying a tipped employee above the full applicable minimum wage, the employer would generally not require the employee to contribute tips to a nontraditional tip pool.

To determine the annual total tip transfer, the Department first multiplied a weighted sum of weekly tip transfers for all wait staff and bartenders who work at full-service restaurants and bars in the United States by 45.2 weeks—the average weeks worked in a year for waiters and waitresses and bartenders in the 2017 CPS Annual Social and Economic Supplement. The Department then reduced this total by 43 percent to account for wait staff and bartenders who work in a state that prohibits mandatory tip pooling or imposes stricter limits on who can participate in a mandatory tip pool than the limits proposed in this NPRM or a state that is in the Tenth Circuit. Using this methodology, the total potential transfer from front-of-the-house employees associated with this proposed rule is $213.4 million. This represents the transfers that the Department expects would occur if every employer that does not take a tip credit, and for whom it was economically beneficial, instituted tip pools that include back-of-the-house workers. In reality, even when it is seemingly economically beneficial, many employers may not change their tip pooling practices, because it would require changes to the current practice to which their employees are accustomed, as well as their payroll and recordkeeping systems.

The Department was unable to determine what proportion of the total tips estimated to be potentially transferred from these workers will realistically be transferred. The Department assumes that the likely potential transfers are somewhere between a minimum of zero and a maximum of $213.4 million, and therefore used the midpoint as a better estimate of likely transfers. The Department accordingly estimates that transfers of tips from front-of-the-house workers will be around $107 million in the first year that this rule is effective. Assuming these transfers occur annually, and there is no real wage growth, this results in 10-year annualized transfers of $107 million at both the 3 percent and 7 percent discount rates. The Department requests comments on whether the midpoint is the appropriate adjustment.

The Department acknowledges that some employers could respond to the proposed rule by decreasing back-of-the-house workers' wages, as the rule will

[20] For a full list of all occupations on O*NET, *see https://www.onetcenter.org/taxonomy/2010/updated.html.*

[21] Because of the uncertainty in the estimate of the percentile ranking of the worker's current wage, the Department used the midpoint percentile for workers in each decile. For example, workers whose current wage was estimated to be in the zero to tenth percentile range were assigned the predicted fifth percentile outside-option wage, those with wages estimated to be in the eleventh to twentieth percentile were assigned the predicted fifteenth percentile outside-option wage, etc.

[22] The 50th percentile method results in a higher transfer estimate ($173 million compared with $107 million).

[23] Predicted overtime pay is calculated as (1.5 × base wage) × weekly hours worked over 40.

allow employers to supplement these employees' wages with tips. Some employers may consider exchanging back-of-the-house workers' hourly wages for tips, but tips fluctuate at any given time. Thus, employers' ability to do so would be limited by market forces, such as, potentially, workers' aversion to risk and the endowment effect (workers potentially valuing their set wages more than tips of the same average amount). Because of a lack of data to quantify the extent to which this will occur, the Department has not included this possibility in the present analysis.

The Department welcomes comments and information regarding whether and to what extent employers will choose to expand existing tip pools to include back-of-the-house employees or otherwise change their current compensation structures.

iii. Estimated Costs, Cost Savings, and Benefits

In this subsection, the Department addresses costs attributable to the proposed rule, by quantifying regulatory familiarization costs and qualitatively discussing additional recordkeeping costs. The Department qualitatively discusses benefits and cost savings associated with this proposed rule. Lastly, the Department qualitatively discusses the potential costs, transfers, and benefits associated with its proposed revision to its regulations to reflect its guidance that an employer may take a tip credit for any amount of time that an employee in a tipped occupation performs related, non-tipped duties performed contemporaneously with his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties.

1. Regulatory Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses associated with reviewing the new regulation. It is not clear whether regulatory familiarization costs are a function of the number of establishments or the number of firms.[24] Presumably, the headquarters of a firm will conduct the regulatory review for businesses with multiple restaurants, and may also require chain restaurants to familiarize themselves with the regulation at the establishment level. To be conservative, the Department used the number of establishments in its cost estimate—which is larger than the number of firms—and assumes that regulatory familiarization occurs at both the headquarters and establishment levels.

The Department assumes that all establishments will incur some regulatory familiarization costs regardless of whether the employer decides to change its tip pooling practices as a result of the proposed rule.[25] There may be differences in familiarization cost by the size of establishments; however, our analysis does not compute different costs for establishments of different sizes. To estimate the total regulatory familiarization costs, the Department used (1) the number of establishments in the two industries, Drinking Places (Alcoholic Beverages) and Full-Service Restaurants; (2) the wage rate for the employees reviewing the rule; and (3) the number of hours that it estimates employers will spend reviewing the rule. Table 3 shows the number of establishments in the two industries. To estimate the number of potentially affected establishments, the Department used data from BLS's Quarterly Census of Employment and Wages (QCEW) for 2018.

TABLE 3—NUMBER OF ESTABLISHMENTS WITH TIPPED WORKERS

Industry	Establishments
NAICS 722410 (Drinking Places (Alcoholic Beverages))	42,826
NAICS 722511 (Full-service Restaurants)	247,237
Total	290,063

Source: QCEW, 2018

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) with a mean wage of $32.65 per hour in 2018 will review the rule.[26] Given the change proposed, the Department assumes that it will take on average about 15 minutes to review the final rule. The Department has selected a small time estimate because it is an average for both establishments making changes to their compensation structure and those who are not (and consequently will have negligible or no regulatory familiarization costs). Further, the change effected by this regulation is unlikely to cause major burdens or costs. Assuming benefits are paid at a rate of 46 percent of the base wage, and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is $53.22; thus, the average cost per establishment is $13.30 for 15 minutes of review time. The number of establishments in the selected industries was 290,063 in 2018. Therefore, regulatory familiarization costs in Year 1 are estimated to be $3.86 million ($13.30 × 290,063 establishments), which amounts to a 10-year annualized cost of $452,422 at a discount rate of 3 percent or $549,471 at a discount rate of 7 percent. Regulatory familiarization costs in future years are assumed to be de minimis.

2. Other Costs

The Department also assumes that there will be a minimal increase in recordkeeping costs associated with this proposed rule. Under the Department's current regulations, employers are only required to keep records of which employees receive tips and how much each employee receives if the employer takes a tip credit. If this rule is finalized as proposed, employers that do not take

[24] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment is in contrast to a firm, or a company, which is a business and may consist of one or more establishments, where each establishment may participate in a different predominant economic activity. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

[25] This includes establishments in states excluded from the transfer calculation.

[26] A Compensation/Benefits Specialist ensures company compliance with federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. *See* BLS, ''13–1141 Compensation, Benefits, and Job Analysis Specialists,'' *https://www.bls.gov/oes/current/oes131141.htm* (last visited August 14, 2019).

a tip credit but collect tips to institute a mandatory tip pool must keep records showing which employees are included in the tip pool, and the amount of tips they receive, as reported by employees to the employer. As such records are already required under IRS Form 4070, there will be minimal recordkeeping costs for employers that pay the full Federal minimum wage in direct cash wages and choose to institute a nontraditional tip pool.

Employers may incur some training costs associated with familiarizing first line managers and staff with the proposed rule; however, the Department believes these costs will be de minimis. The Department welcomes data on these costs.

3. Benefits

Section 3(m)'s tip credit provision allows an employer to meet a portion of its Federal minimum wage obligation from the tips customers give employees. If an employer takes a tip credit, section 3(m)(2)(A) applies, along with its requirement that only employees who customarily and regularly receive tips be included in any mandatory tip pool. When an employer does not take a tip credit, however, the proposed rule would allow the employer to act in a manner currently prohibited by regulation—that is, by distributing tips to employees who are employed in occupations in which they do not customarily and regularly receive tips (*e.g.,* cooks or dishwashers) through a tip pool. The proposed rule, therefore, provides employers greater flexibility in determining their pay policies for tipped and non-tipped workers.

Full-service restaurants commonly have a tip pool. One study suggests that tip pooling contributes to increased service quality, along with enhanced interaction and cooperation between coworkers, especially when team members rely on input or task completion from each other.[27] Another study indicates that tip pooling may foster customer-focused service, promote employee camaraderie, and increase productivity.[28] Additionally, under the proposed changes, the employer will be able to distribute customer tips to back-of-the-house employees like cooks and dishwashers, possibly resulting in increased earnings for those employees. The Department believes that allowing employers to expand tip pools beyond customarily and regularly tipped workers like servers and bartenders could help incentivize back-of-the-house workers, which may improve the customer's experience.

4. Cost Savings

The cost savings associated with this rule would result from the increased earnings for back-of-the-house employees. Higher earnings for these employees could result in reduced turnover, which reduces hiring and training costs for employers. This proposed rule would also give employers greater flexibility for tip pooling, and could reduce effort spent ensuring that the tip pool is limited to only customarily and regularly tipped employees. The Department believes that the cost savings would outweigh any increased rule-familiarization and recordkeeping costs.

This rule may also reduce deadweight loss. Deadweight loss is the loss of economic efficiency that occurs when the perfectly competitive equilibrium in a market for a good or service is not achieved. Minimum wages may prevent the market from reaching equilibrium and thus result in fewer hours worked than would otherwise be efficient. Allowing nontraditional tip pools may cause a shift in the labor demand and/or supply curves for wait staff and bartenders. This could result in the market moving closer to the competitive market equilibrium. The Department did not quantify the potential reduction in deadweight loss because of uncertainty (*e.g.,* what are the appropriate demand and supply elasticities).

5. Costs, Benefits, and Potential Transfers Associated With Revision to Dual Jobs Regulation

The Department proposes to amend its regulations to reflect its recent guidance removing the limit on the amount of time that an employee for whom an employer takes a tip credit can perform related, non-tipped duties has potential benefits. Under the previous guidance, in order to ensure they were in compliance, employers may have tracked how tipped employees were spending their time, which could be difficult and costly. Removing the time requirement will eliminate this monitoring cost. Additionally, the revisions add clarity by providing a reference list of applicable related duties through O*NET. Although employers will reference this list of duties to ensure that their employees' non-tipped duties are related to their tipped occupations, this would likely be less of a burden than constantly monitoring their employee's time.

The removal of the twenty percent time limit may result in tipped workers such as wait staff and bartenders performing more of these non-tipped duties such as ''cleaning and setting tables, toasting bread, making coffee, and occasionally washing dishes or glasses.'' Consequently, employment of workers currently performing these duties, such as dishwashers and cooks, may fall, possibly resulting in a transfer of employment-related producer surplus from those non-tipped workers to tipped workers who work longer hours. However, tipped workers might lose tipped income by spending more of their time performing duties where they are not earning tips, while still receiving cash wages of less than minimum wage. For example, assume that prior to this change, a restaurant server spends 12 minutes each hour of their shift (*i.e.,* 20 percent) performing related, non-tipped duties (*e.g.,* clearing tables, washing dishes, etc.), and 48 minutes providing direct customer service. Assume the server earns $12 per hour in tips (*i.e.,* $0.25 per minute of customer service work). With no 20 percent limit on the performance of related, non-tipped duties, an employee might spend more than 12 minutes per hour performing related, non-tipped duties, as long as they still receive enough tips to earn at least $7.25 per hour for the shift. Thus, if an employee now spends 20 minutes performing non-tipped work (*i.e.,* 33 percent of their shift) and 40 minutes interacting with customers, they would be expected to lose $2 per hour in tips, a decrease accounting for eight fewer minutes per hour spent performing tip-generating work (*i.e.,* 8 minutes × $0.25 per minute). Similarly, employers that had been paying the full minimum wage to tipped employees performing related, non-tipped duties could potentially pay the lower direct cash wage for this time and could pass these reduced labor cost savings on to consumers. As mentioned above, the Department lacks data to quantify this potential reduction in tips. For instance, data does not exist on the amount of time that tipped employees currently spend on tipped duties or related, nontipped duties. Absent such a baseline, the Department cannot quantify how time spent by tipped employees on related, nontipped duties would change as a result of this proposed rule. The Department welcomes feedback on how employers would adjust employees' schedules as a result of this recent guidance.

[27] Samuel Estreicher & Jonathan Nash, *The Law and Economics of Tipping: The Laborer's Perspective,* Am. Law & Econ. Ass'n Annual Meetings. (2004), *https://law.bepress.com/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1068&context=alea.*

[28] Ofer H. Azar, *The Implications of Tipping for Economics and Management,* 30 (10) Int'l J. Soc. Econ., 1084–94 (2003), *http://individual.utoronto.ca/diep/c/azar2003.pdf.*

iv. Summary of Transfers and Costs

Below the Department provides a summary table of the quantified transfers and costs for the RIA. Transfer costs in years two through ten are assumed to be the same as in Year 1.

TABLE 4—SUMMARY OF TRANSFERS AND COSTS CALCULATIONS

[2018 dollars]

	Potential tip transfers (Millions)	Regulatory familiarization costs (Millions)
Year 1:		
Preferred Estimate	$106.7	$3.9
Lower-Bound	0.0	N/A
Upper-Bound	213.4	N/A
10-year Annualized Transfers (Preferred Est.):		
3% Discount Rate	106.7	0.5
7% Discount Rate	106.7	0.5

v. Additional Potential Impacts of This Rulemaking

The Department believes that by implementing section 3(m)(2)(B) and providing clarification on tip pooling, this proposal could affect the number of employers who choose to implement tip pools or otherwise affect their practices. Because of the lack of data to determine how employers would behave, the Department welcomes comments that provide insight into employers' decisions to implement tip pools, and how these decisions affect both employers and employees.

C. Analysis of Regulatory Alternatives

In developing this NPRM, the Department considered a regulatory alternative that would be less restrictive than what is currently proposed and one that would be more restrictive. For the less-restrictive option, the Department considered excluding employers that do not take a tip credit from the requirement to keep records of the weekly or monthly amount of tips received by each employee as reported by the employee to the employer.[29] The Department concluded, however, that requiring all employers with tip pools to keep records of the weekly or monthly amount of tips received by employees would ensure uniformity among these employers and help the Department administer section 3(m)(2)(B).

For a more restrictive alternative, the Department considered requiring employers that collect cash tips for a mandatory tip pool to fully distribute the tips on a daily basis. The Department concluded, however, that this requirement would be unnecessarily onerous for employers. The Department's proposal for full distribution of cash and credit-card tips on the regular payday or, in certain cases, as soon as practicable afterward, would be simpler for employers to follow. It would align the policy for cash tips with the current policy for credit-card tips and allow employers to pay tips the same day they otherwise pay their employees. The Department believes that the current proposal will ensure that employers do not operate tip pools in such a manner that they ''keep'' tips.

VII. Regulatory Flexibility Analysis

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, Public Law 104–121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined the regulatory requirements of the proposed rule to determine whether they would have a significant economic impact on a substantial number of small entities.

In its analysis, the Department used the Small Business Administration size standards, which determine whether a business qualifies for small-business status.[30] According to the 2017 standards, Full-service Restaurants (NAICS 722511) and Drinking Places (Alcoholic Beverages) (NAICS 722410) have a size standard of $7.5 million in annual revenue.[31] The Department used this number to estimate the number of small entities. Any establishments with annual sales revenue less than this amount were considered small entities.

The Department used the U.S. Census Bureau's 2012 Economic Census to obtain the number of establishments (operating the entire year) and annual sales/receipts for the two industries in the analysis: Full-service Restaurants and Drinking Places (Alcoholic Beverages).[32] From annual receipts/sales, the Department can estimate how many establishments fall under the size standard. Table 5 shows the number of private, year-round establishments in the two industries by revenue.[33]

The annual cost per establishment is the regulatory familiarization cost of $13.30 per establishment calculated in section V.B.iii.1. The Department applied this cost to all sizes of establishments since each establishment would incur this cost regardless of the number of affected workers. Finally, the impact of this provision was calculated as the ratio of annual cost per establishment to average sales receipts per establishment. As shown, the annual cost per establishment is less than 0.03 percent of average annual sales for establishments in all small

[29] Current § 516.28(a) requires employers that take a tip credit under the FLSA to keep records of the weekly or monthly amount of tips received by employees.

[30] SBA, Summary of Size Standards by Industry Sector, 2017, *www.sba.gov/document/support-table-size-standards.*

[31] *Id.,* Subsector 722.

[32] U.S. Census Bureau, 2012 Economic Census, Accommodation and Food Services: Subject Series—Estab & Firm Size: Summary Statistics by Sales Size of Establishments for the U.S.: 2012. *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.*

[33] The small-business size standard for the two industries is $7.5 million in annual revenue. However, the final size category reported in the table is $5 million–$9 million. This is a data limitation because the 2012 Economic Census reported this category of $5 million–$9 million and not $5 million–$7.5 million. Thus, the total number of firms shown may be slightly higher than the actual number of small entities.

entity size classes. The impact of this proposed rule on small establishments will be de minimis. The Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

TABLE 5—COSTS TO SMALL ENTITIES

Annual revenue/sales/receipts	Number of establishments [a]	Average annual sales per establishment ($) [b]	Annual cost per establishment ($) [c]	Annual cost per establishment as percent of sales/receipts
722511 Full-service Restaurants				
< $100,000	10,211	$68,356	$13.30	0.02
100,000 to 499,999	28,651	193,823	13.30	0.01
250,000 to 499,999	39,554	405,727	13.30	0.00
500,000 to 999,999	46,793	792,561	13.30	0.00
1,000,000 to 2,499,999	45,173	1,729,025	13.30	0.00
2,500,000 to 4,999,999	17,039	3,750,831	13.30	0.00
5,000,000 to 9,999,999	3,531	7,128,700	13.30	0.00
722410 Drinking Places (Alcoholic Beverages)				
< 100,000	4,622	69,775	13.30	0.02
100,000 to 249,999	11,610	188,975	13.30	0.01
250,000 to 499,999	9,059	387,358	13.30	0.00
500,000 to 999,999	5,138	762,365	13.30	0.00
1,000,000 to 2,499,999	3,386	1,665,727	13.30	0.00
2,500,000 to 4,999,999	755	3,708,103	13.30	0.00
5,000,000 to 9,999,999	164	7,318,368	13.30	0.00

[a] Limited to establishments operated for the entire year.
[b] Inflated to $2018 using the GDP deflator.
[c] The annual cost per establishment is the regulatory familiarization cost per establishment calculated in section V.B.iii.1.

VIII. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any Federal mandate that may result in excess of $100 million (adjusted annually for inflation) in expenditures in any one year by state, local, and tribal governments in the aggregate, or by the private sector. This rulemaking is not expected to affect state, local, or tribal governments. While this rulemaking would affect employers in the private sector, it is not expected to result in expenditures greater than $100 million in any one year. See section V.B for an assessment of anticipated costs and benefits to the private sector.

IX. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects

29 CFR Part 10

Administrative practice and procedure, Construction industry, Government procurement, Law enforcement, Reporting and recordkeeping requirements, Wages

29 CFR Part 516

Minimum wages, Reporting and recordkeeping requirements, Wages

29 CFR Part 531

Wages

29 CFR Part 578

Penalties, Wages

29 CFR Part 579

Child labor, Penalties

29 CFR Part 580

Administrative practice and procedure, Child labor, Penalties, Wages.

For the reasons set forth above, the Department proposes to amend Title 29, Parts 10, 516, 531, 578, 579, and 580 of the Code of Federal Regulations as follows:

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 1. The authority citation for Part 10 is revised to read as follows:

Authority: 4 U.S.C. 301; section 4, E.O 13658, 79 FR 9851; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

■ 2. Amend § 10.28 by revising paragraphs (b)(2), (c), (e), and (f) to read as follows:

§ 10.28 Tipped employees.

* * * * *

(b) * * *

(2)(i) In some situations an employee is employed in a dual job, as for example, where a maintenance person in a hotel also works as a server. In such a situation the employee, if he or she customarily and regularly receives more than $30 a month in tips for his or her work as a server, is a tipped employee only with respect to his or her employment as a server. The employee is employed in two occupations, and no tip credit can be taken for his or her hours of employment in the occupation of maintenance person.

(ii) Such a situation is distinguishable from that of an employee who spends time performing duties that are related to his or her tip-producing occupation but not themselves directed toward producing tips. For example, a server may spend part of his or her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. Likewise, a counter attendant may also prepare his or her own short orders or may, as part of a group of counter attendants, take a turn as a short order cook for the group. An employer may take a tip credit for any amount of time that an employee performs related, non-tipped duties contemporaneously with his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties.

(iii) ''*Related*'' *duties defined.* In addition to the examples described in (e)(ii), a non-tipped duty is related to a tip-producing occupation if the duty is listed as a task in the description of the tip-producing occupation in the Occupational Information Network (O*NET) at www.onetonline. Occupations not listed in O*NET may qualify as tipped occupations. For those occupations, duties usually and customarily performed by employees are related duties as long as they are included in the list of duties performed in similar O*NET occupations.

(c) *Characteristics of tips.* A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. It is to be distinguished from payment of a fixed charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer. Customers may present cash tips directly to the employee or may designate a tip amount to be added to their bill when paying with a credit card or by other electronic means. Special gifts in forms other than money or its equivalent such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of determining wages paid under the Executive Order.

* * * * *

(e) *Tip pooling.* Where tipped employees share tips through a tip pool, only the amounts retained by the tipped employees after any redistribution through a tip pool are considered tips in applying the provisions of FLSA section 3(t) and the wage payment provisions of section 3 of the Executive Order. There is no maximum contribution percentage on mandatory tip pools. However, an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

(f) *Notice.* An employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit. The employer must inform the tipped employee of the amount of the cash wage that is to be paid by the employer, which cannot be lower than the cash wage required by paragraph (a)(1) of this section; the additional amount by which the wages of the tipped employee will be considered increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a tip pooling arrangement; and that the tip credit shall not apply to any worker who has not been informed of these requirements in this section.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

■ 3. Revise the authority section for Part 516 to read:

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.28 also issued under 29 U.S.C. 203(m), as amended by sec. 2105(b), Pub. L. 104–188, 110 Stat. 1755; sec. 8102(a), Pub. L. 110–28, 121 Stat. 112; and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* Section 516.34 also issued under Sec. 7, 103 Stat. 944, 29 U.S.C. 207(q).

■ 4. Amend § 516.28 by revising the section heading and paragraph (b) to read as follows:

§ 516.28 Tipped employees and employer-administered tip pools.

* * * * *

(b) With respect to employees who receive tips but for whom a tip credit is not taken under section 3(m)(2)(A), any employer that collects tips received by employees to operate a mandatory tip-pooling or tip-sharing arrangement shall maintain and preserve payroll or other records containing the information and data required in § 516.2(a) and, in addition, the following:

(1) A symbol, letter, or other notation placed on the pay records identifying each employee who receive tips.

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

■ 5. Revise the authority citation for Part 531 to read as follows:

Authority: 29 U.S.C. 203(m) and (t), as amended by sec. 3(m), Pub. L. 75–718, 52 Stat. 1060; sec. 2, Pub. L. 87–30, 75 Stat. 65; sec. 101, sec. 602, Pub. L. 89–601, 80 Stat. 830; sec. 29(B), Pub. L. 93–259, 88 Stat. 55 sec. 3, sec. 15(c), Pub. L. 95–151, 91 Stat 1245; sec. 2105(b), Pub. L. 104–188, 110 Stat 1755; sec. 8102, Pub. L. 110–28, 121 Stat. 112; and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348.

■ 6. Amend § 531.50 by:
■ a. Revising paragraph (a) introductory text and adding paragraph (a)(3);
■ b. Redesignating paragraph (b) as paragraph (c); and
■ c. Adding a new paragraph (b).

The revisions and additions read as follows:

§ 531.50 Statutory provisions with respect to tipped employees.

(a) With respect to tipped employees, section 3(m)(2)(A) provides that, in determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

* * *

(3) Section 3(m)(2)(A) also provides that an employer that takes a tip credit against its minimum wage obligations to its tipped employees must inform those employees of the provisions of that subsection, and that the employees must retain all of their tips, although the employer may require those employees to participate in a tip pool with other tipped employees that customarily and regularly receive tips.

(b) Section 3(m)(2)(B) provides that an employer may not keep tips received by its employees for any purposes, including allowing managers and supervisors to keep any portion of employees' tips, regardless of whether the employer takes a tip credit under section 3(m)(2)(A).

* * * * *

■ 7. Revise the first sentence of § 531.51 to read as follows:

§ 531.51 Conditions for taking tip credits in making wage payments.

The wage credit permitted on account of tips under section 3(m)(2)(A) may be taken only with respect to wage payments made under the Act to those employees whose occupations in the workweeks for which such payments are made are those of ''tipped employees'' as defined in section 3(t).

* * *

■ 8. Revise § 531.52 to read as follows:

§ 531.52 General restrictions on an employer's use of its employees' tips.

(a) A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer. An employer that takes a tip credit against its minimum wage obligations is prohibited from using an employee's tips for any reason other than that which is statutorily permitted in section 3(m)(2)(A): As a credit against its minimum wage obligations to the employee, or in furtherance of a tip pool limited to employees who customarily and regularly receive tips. Only tips actually received by an employee as money belonging to the employee may be counted in determining whether the person is a ''tipped employee'' within the meaning of the Act and in applying the provisions of section 3(m)(2)(A) which govern wage credits for tips.

(b) Section 3(m)(2)(B) of the Act provides that an employer may not keep tips received by its employees for any purposes, regardless of whether the employer takes a tip credit.

(1) An employer may exert control over an employee's tips only to distribute tips to the employee who received them, require employees to share tips with other employees in compliance with § 531.54, or, where the employer facilitates tip pooling by collecting and redistributing employees' tips, distribute tips to employees in a tip pool in compliance with § 531.54.

(2) An employer may not allow managers and supervisors to keep any portion of an employee's tips, regardless of whether the employer takes a tip credit. For purposes of section 3(m)(2)(B), the term ''manager'' or ''supervisor'' shall mean any employee whose duties match those of an executive employee as described in § 541.100(a)(2) through (4) or § 541.101.

■ 9. Revise § 531.54 to read as follows:

§ 531.54 Tip pooling.

(a) *Monies counted as tips.* Where employees practice tip splitting, as where waiters give a portion of their tips to the busser, both the amounts retained by the waiters and those given the bussers are considered tips of the individuals who retain them, in applying the provisions of sections 3(m)(2)(A) and 3(t). Similarly, where an accounting is made to an employer for his information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his own are counted as his tips for purposes of the Act. Section 3(m)(2)(A) does not impose a maximum contribution percentage on mandatory tip pools.

(b) *Meaning of ''keep.''* Section 3(m)(2)(B)'s prohibition against keeping tips applies regardless of whether an employer takes a tip credit. Section 3(m)(2)(B) expressly prohibits employers from requiring employees to share tips with managers or supervisors, as defined in § 531.52(b)(2), or employers, as defined in 29 U.S.C. 203(d). An employer does not violate section 3(m)(2)(B)'s prohibition against keeping tips if it requires employees to share tips with other employees who are eligible to receive tips.

(1) *Full and prompt distribution of tips.* An employer that facilitates tip pooling by collecting and redistributing employees' tips does not violate section 3(m)(2)(B)'s prohibition against keeping tips if it fully distributes any tips the employer collects no later than the regular payday for the workweek in which the tips were collected, or when the pay period covers more than a single workweek, the regular payday for the period in which the workweek ends. To the extent that it is not possible for an employer to ascertain the amount of tips that have been received or how tips should be distributed prior to processing payroll, tips must be distributed to employees as soon as practicable after the regular payday.

(c) *Employers that take a section 3(m)(2)(A) tip credit.* When an employer takes a tip credit pursuant to section 3(m)(2)(A):

(1) The employer may require an employee for whom the employer takes a tip credit to contribute tips to a tip pool only if it is limited to employees who customarily and regularly receive tips; and

(2) The employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

(d) *Employers that do not take a section 3(m)(2)(A) tip credit.* An employer that pays its tipped employees the full minimum wage and does not take a tip credit may impose a tip pooling arrangement that includes dishwashers, cooks, or other employees in the establishment who are not employed in an occupation in which employees customarily and regularly receives tips. An employer may not participate in such a tip pool, and may not include supervisors and managers in the pool.

■ 10. Revise § 531.55(a) to read as follows:

§ 531.55 Examples of amounts not received as tips.

(a) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its employees, cannot be counted as a tip received in applying the provisions of sections 3(m)(2)(A) and 3(t). Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received.

* * * * *

■ 11. Amend § 531.56 by revising the second and third sentences in paragraph (a), and paragraphs (d) and (e) to read as follows:

§ 531.56 ''More than $30 a month in tips.''

(a) *In general.* * * * An employee employed in an occupation in which the tips he receives meet this minimum standard is a ''tipped employee'' for whom the wage credit provided by section 3(m)(2)(A) may be taken in computing the compensation due him under the Act for employment in such occupation, whether he is employed in it full time or part time. An employee employed full time or part time in an occupation in which he does not receive more than $30 a month in tips customarily and regularly is not a ''tipped employee'' within the meaning of the Act and must receive the full compensation required by its provisions in cash or allowable facilities without any deduction for tips received under the provisions of section 3(m)(2)(A).

* * * * *

(d) *Significance of minimum monthly tip receipts.* More than $30 a month in tips customarily and regularly received by the employee is a minimum standard that must be met before any wage credit for tips is determined under section 3(m)(2)(A). It does not govern or limit the determination of the appropriate amount of wage credit under section 3(m)(2)(A) that may be taken for tips under section 6(a)(1) (tip credit equals the difference between the minimum wage required by section 6(a)(1) and the cash wage paid (at least $2.13 per hour)).

(e) *Dual jobs.* (1) In some situations an employee is employed in a dual job, as for example, where a maintenance

person in a hotel also works as a server. In such a situation the employee, if he or she customarily and regularly receives more than $30 a month in tips for his or her work as a server, is a tipped employee only with respect to his or her employment as a server. The employee is employed in two occupations, and no tip credit can be taken for his or her hours of employment in the occupation of maintenance person.

(2) Such a situation is distinguishable from that of an employee who spends time performing duties that are related to his or her tip-producing occupation but not themselves directed toward producing tips. For example, a server may spend part of his or her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. Likewise, a counter attendant may also prepare his or her own short orders or may, as part of a group of counter attendants, take a turn as a short order cook for the group. An employer may take a tip credit for any amount of time that an employee performs related, non-tipped duties contemporaneously with his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties.

(3) ''*Related*'' *duties defined.* In addition to the examples described in (e)(2), a non-tipped duty is related to a tip-producing occupation if the duty is listed as a task in the description of the tip-producing occupation in the Occupational Information Network (O*NET) at www.onetonline. Occupations not listed in O*NET may qualify as tipped occupations. For those occupations, duties usually and customarily performed by employees are related duties as long as they are included in the list of duties performed in similar O*NET occupations.

■ 12. Revise § 531.59 to read as follows:

§ 531.59 The tip wage credit.

(a) In determining compliance with the wage payment requirements of the Act, under the provisions of section 3(m)(2)(A) the amount paid to a tipped employee by an employer is increased on account of tips by an amount equal to the formula set forth in the statute (minimum wage required by section 6(a)(1) of the Act minus cash wage paid (at least $2.13)), provided that the employer satisfies all the requirements of section 3(m)(2)(A). This tip credit is in addition to any credit for board, lodging, or other facilities which may be allowable under section 3(m).

(b) As indicated in § 531.51, the tip credit may be taken only for hours worked by the employee in an occupation in which the employee qualifies as a ''tipped employee.'' Pursuant to section 3(m)(2)(A), an employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit of the provisions of section 3(m)(2)(A) of the Act, *i.e.:* The amount of the cash wage that is to be paid to the tipped employee by the employer; the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a tip pooling arrangement limited to employees who customarily and regularly receive tips; and that the tip credit shall not apply to any employee who has not been informed of these requirements in this section. The credit allowed on account of tips may be less than that permitted by statute (minimum wage required by section 6(a)(1) minus the cash wage paid (at least $2.13)); it cannot be more. In order for the employer to claim the maximum tip credit, the employer must demonstrate that the employee received at least that amount in actual tips. If the employee received less than the maximum tip credit amount in tips, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips. With the exception of tips contributed to a tip pool limited to employees who customarily and regularly receive tips as described in § 531.54, section 3(m)(2)(A) also requires employers that take a tip credit to permit employees to retain all tips received by the employee.

■ 13. Revise § 531.60 to read as follows:

§ 531.60 Overtime payments.

When overtime is worked by a tipped employee who is subject to the overtime pay provisions of the Act, the employee's regular rate of pay is determined by dividing the employee's total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by the employee in that workweek for which such compensation was paid. (*See* part 778 of this chapter for a detailed discussion of overtime compensation under the Act.) In accordance with section 3(m)(2)(A), a tipped employee's regular rate of pay includes the amount of tip credit taken by the employer per hour (not in excess of the minimum wage required by section 6(a)(1) minus the cash wage paid (at least $2.13)), the reasonable cost or fair value of any facilities furnished to the employee by the employer, as authorized under section 3(m) and this part 531, and the cash wages including commissions and certain bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the employer to the employee as remuneration for employment within the meaning of the Act.

PART 578—[AMENDED]

■ 14. The heading of Part 578 is revised to read as follows:

PART 578—TIP RETENTION, MINIMUM WAGE, AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 15. The authority citation for Part 578 is revised to read as follows:

Authority: 29 U.S.C. 216(e), as amended by sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29, sec. 302(a), Pub. L. 110–233, 122 Stat. 920, and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, 1321–373, and sec. 701, Pub. L. 114–74, 129 Stat 584.

■ 16. Revise § 578.1 to read as follows:

§ 578.1 What does this part cover?

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to provide that any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the Act shall be subject to a civil money penalty not to exceed $1,000 for each such violation. In 2001, WHD adjusted this penalty for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)). *See* 66 FR 63503 (Dec. 7, 2001). The Genetic Information Nondiscrimination Act of 2008 amended section 16(e) of the Act to reflect this increase. *See* Pub. L. 110–233, sec. 302(a), 122 Stat. 920. Section 1201(b)(3) of the Consolidated Appropriations Act, 2018, amended section 16(e) to add that any person who violates section 3(m)(2)(B) of the Act shall be subject to a civil money penalty not to exceed $1,100. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of

2015 (Pub. L. 114–74, section 701), requires that inflationary adjustments be annually made in these civil money penalties according to a specified cost-of-living formula. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed. The procedural requirements for assessing and contesting such penalties are contained in part 580 of this chapter.

■ 17. Revise § 578.3 to read as follows:

§ 578.3 What types of violations may result in a penalty being assessed?

(a)(1) A penalty of up to $1,100 may be assessed against any person who repeatedly or willfully violates section 3(m)(2)(B) of the Act.

(2) A penalty of up to $1,964 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalties stated in paragraphs (a)(1) and (2) of this section will be determined by applying the criteria in § 578.4.

(b) *Repeated violations.* An employer's violation of section 3(m)(2)(B), section 6, or section 7 of the Act shall be deemed to be ''repeated'' for purposes of this section:

(1) Where the employer has previously violated section 3(m)(2)(B), section 6, or section 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 3(m)(2)(B), section 6, or section 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

(c) *Willful violations.* (1) An employer's violation of section 3(m)(2)(B), section 6, or section 7 of the Act shall be deemed to be ''willful'' for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) For purposes of this section, the employer's receipt of advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful is a relevant fact and circumstance when determining if the employer's conduct is knowing.

(3) For purposes of this section, whether the employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry is a relevant fact and circumstance when determining if the employer's conduct is in reckless disregard of the requirements of the Act.

18. Revise § 578.4(a) to read as follows:

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any repeated or willful violation of section 3(m)(2)(B), section 6, or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 19. The authority citation for Part 579 is revised to read as follows:

Authority: 29 U.S.C. 203(m), (l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–7, 129 Stat 584.

■ 20. Amend § 579.1 by:

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (a)(2) as paragraph (a)(2)(i); and

■ c. Adding paragraph (a)(2)(ii).

The revisions and additions read as follows:

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, the Compactor and Balers Safety Standards Modernization Act of 1996, the Genetic Information Nondiscrimination Act of 2008, and the Consolidated Appropriations Act of 2018, provides for the imposition of civil money penalties in the following manner:

* * * * *

(2) * * *

(ii) Any person who repeatedly or willfully violates section 203(m)(2)(B) of the FLSA, relating to the retention of tips, shall be subject to a civil penalty not to exceed $1,100 for each such violation.

* * * * *

■ 21. Amend § 579.2 by revising the definition of ''Willful violations'' to read as follows:

§ 579.2 Definitions.

* * * * *

Willful violations under this section has several components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, shall be deemed to be *willful* for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, the employer's receipt of advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful is a relevant fact and circumstance when determining if the employer's conduct is knowing. For purposes of this section, whether the employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry is a relevant fact and circumstance when determining if the employer's conduct is in reckless disregard of the requirements of the Act.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 22. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 23. Revise the first sentence of § 580.2 to read as follows:

§ 580.2 Applicability of procedures and rules.

The procedures and rules contained in this part prescribe the administrative process for assessment of civil money penalties for any violation of the child labor provisions at section 12 of the Act and any regulation thereunder as set

forth in part 579, and for assessment of civil money penalties for any repeated or willful violation of the tip retention provisions of section 3(m)(2)(B), the minimum wage provisions of section 6, or the overtime provisions of section 7 of the Act or the regulations thereunder set forth in 29 CFR subtitle B, chapter V. * * *

■ 24. Revise the first sentence of § 580.3 to read as follows:

§ 580.3 Written notice of determination required.

Whenever the Administrator determines that there has been a violation by any person of section 12 of the Act relating to child labor or any regulation issued under that section, or determines that there has been a repeated or willful violation by any person of section 3(m)(2)(B), section 6, or section 7 of the Act, and determines that imposition of a civil money penalty for such violation is appropriate, the Administrator shall issue and serve a notice of such penalty on such person in person or by certified mail. * * *

■ 25. Amend § 580.12 by revising the first sentence of paragraph (b) of to read as follows:

§ 580.12 Decision and Order of Administrative Law Judge.

* * * * *

(b) The decision of the Administrative Law Judge shall be limited to a determination of whether the respondent has committed a violation of section 12, or a repeated or willful violation of section 3(m)(2)(B), section 6, or section 7 of the Act, and the appropriateness of the penalty assessed by the Administrator. * * *

* * * * *

■ 26. Amend § 580.18 by revising the third sentence in paragraph (b)(3) to read as follows:

§ 580.18 Collection and recovery of penalty.

* * * * *

(b) * * *

(3) * * * A willful violation of sections 3(m)(2)(B), 6, 7, or 12 of the Act may subject the offender to the penalties provided in section 16(a) of the Act, enforced by the Department of Justice in criminal proceedings in the United States courts. * * *

The following appendix will not appear in the Code of Federal Regulations.

Appendix Table 1—List of Occupations Included in the Outside-Option Regression Sample

Amusement and Recreation Attendants
Bus Drivers, School or Special Client
Bus Drivers, Transit and Intercity
Cashiers
Childcare Workers
Concierges
Door-To-Door Sales Workers, News and Street Vendors, and Related Workers
Driver/Sales Workers
Flight Attendants
Funeral Attendants
Hairdressers, Hairstylists, and Cosmetologists
Home Health Aides
Hotel, Motel, and Resort Desk Clerks
Insurance Sales Agents
Library Assistants, Clerical
Maids and Housekeeping Cleaners
Manicurists and Pedicurists
Massage Therapists
Nursing Assistants
Occupational Therapy Aides
Office Clerks, General
Orderlies
Parking Lot Attendants
Parts Salespersons
Personal Care Aides
Pharmacy Aides
Pharmacy Technicians
Postal Service Clerks
Real Estate Sales Agents
Receptionists and Information Clerks
Recreation Workers
Residential Advisors
Retail Salespersons
Sales Agents, Financial Services
Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive
Social and Human Service Assistants
Statement Clerks
Stock Clerks, Sales Floor
Subway and Streetcar Operators
Taxi Drivers and Chauffeurs
Telemarketers
Telephone Operators
Tellers
Tour Guides and Escorts
Travel Agents
Travel Guides

Signed in Washington, DC this 19th day of September, 2019.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

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Part V

The President

Proclamation 9941—National Manufacturing Day, 2019

Federal Register
Vol. 84, No. 195
Tuesday, October 8, 2019

Presidential Documents

Title 3—

The President

Proclamation 9941 of October 3, 2019

National Manufacturing Day, 2019

By the President of the United States of America

A Proclamation

Manufacturing is a pillar of the American economy, and the hard work and ingenuity of America's manufacturers and manufacturing workers bolster the strength of our Nation. On National Manufacturing Day, we recognize the individuals who drive this vital sector of our economy, and we recommit to restoring the glory of our proud heritage as a Nation of industrious builders of world-class products.

Manufacturing spurs innovation and fuels economic growth, providing all Americans with opportunities to prosper and thrive. My Administration has worked tirelessly to promote increased opportunities for manufacturers and manufacturing workers after years of neglect. The Tax Cuts and Jobs Act, capital investment deductions, strong trade policies, and focused deregulations have all strengthened American businesses. Our policies and actions are delivering real results, with our economy having already added more than 512,000 manufacturing jobs since my election. In communities across our Nation, American workers and families are reaping the benefits of this industrial boom, with nominal average hourly earnings rising 3.2 percent over the past 12 months and the unemployment rate falling to a 50-year low.

Along with many great benefits, our flourishing job market also presents new challenges. With more than 7 million open jobs in July, ensuring workers have access to the equipment and skills training they need to secure and thrive in high-demand jobs is critical to our Nation's continued prosperity. To accomplish this, I have increased apprenticeship opportunities, including through the Task Force on Apprenticeship Expansion. Last year, I also established the President's National Council for the American Worker. The council supports and promotes education programs that provide workers with the technical knowledge needed in today's economy. American employers and manufacturers are rising to the challenge, and more than 350 organizations have signed our Pledge to America's Workers to provide more than 14 million employment and training opportunities for American workers.

I am also renegotiating one-sided trade deals to ensure that American workers and manufacturers compete on a level playing field with foreign competitors. In 2018, I signed the United States-Mexico-Canada Agreement (USMCA), delivering on the promise I made to the American people to renegotiate the outdated North American Free Trade Agreement (NAFTA). Once approved by the Congress, the USMCA will rebalance trade on our continent to once again benefit American producers, creating an estimated 50,000 jobs in the manufacturing sector alone. We have also amended the United States-Korea Free Trade Agreement (KORUS) to include key provisions that enable increased American exports and protect high-paying manufacturing jobs in our Nation's auto industry. And just this past month, we renegotiated how international postal rates are set in order to ensure fairness for small- and medium-size American manufacturing companies.

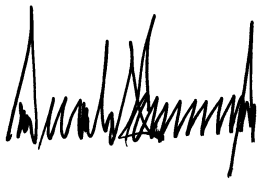
For too long, other nations have exploited the pioneering spirit of our country's entrepreneurs. My Administration is standing up to these bad actors around the world to protect American intellectual property, including

innovative manufacturing techniques and new technology developed in the United States. In order to maintain our competitive edge in an increasingly global and technology-driven economy, we must protect the advancements and breakthroughs in industry that are vital to sustaining recent successes and accelerating growth. That is why we will continue working to put an end to intellectual property theft and other abusive practices through strong enforcement of our trade laws and efforts to strengthen our cyber infrastructure. We will never stop working to protect the American ingenuity that powers our robust economy and bolsters our national defense.

The American workforce and manufacturing industry are the best in the world, and my Administration refuses to allow them to be left behind. The unrivaled work ethic of our tenacious working men and women will always set the global standard for workmanship and resourcefulness. Today, we celebrate the renaissance in American manufacturing that is restoring our country's dominance in global and domestic markets, and we recommit to building on these achievements in the years to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 4, 2019, as National Manufacturing Day. I call upon all Americans to celebrate the entrepreneurs, innovators, and workers in manufacturing who are making our communities strong.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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