FEDERAL REGISTER

Vol. 84 Tuesday,

No. 214 November 5, 2019

Pages 59525–59710

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 84 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 84, No. 214

Tuesday, November 5, 2019

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.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9956 59693
9957 59697
9958 59699
9959 59701
9960 59703
9961 59705
9962 59707

Executive Orders:

13495 (Revoked by EO 13897) 59709
13897 59709

9 CFR

557 (3 documents) 59678, 59682, 59685

29 CFR

Proposed Rules:

778 59590

33 CFR

100 (3 documents) 59525, 59526
165 59526

Proposed Rules:

165 59602

40 CFR

52 59527

42 CFR

600 59529

44 CFR

64 59548

45 CFR

102 59549

47 CFR

1 59567

Proposed Rules:

1 59605
73 59605

49 CFR

614 59568

50 CFR

17 59570
648 59588
679 59588

Rules and Regulations

Federal Register
Vol. 84, No. 214
Tuesday, November 5, 2019

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0720]

Special Local Regulation: Palm Beach Holiday Boat Parade

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation on December 7, 2019 to provide for the safety and security of navigable waterways during the Palm Beach Holiday Boat Parade. During the enforcement period, all non-participant persons and vessels will be prohibited from entering, transiting, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative. The operator of any vessel in the regulated area must comply with instructions from the Coast Guard or designated representative.

DATES: The regulation in 33 CFR 100.701, Table to § 100.701, Line 8 will be enforced on December 7, 2019, from 5:30 p.m. through 8:30 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard: Telephone: 305–535–4317, Email: *Omar.Beceiro@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation for the Palm Beach Holiday Boat Parade published in 33 CFR 100.701, Table to § 100.701, Line 8 on December 7, 2019 from 5:30 p.m. through 8:30 p.m. This action is being taken to provide for the safety and security of navigable waterways during this one-day event. Our regulation for marine events within the Seventh Coast Guard District, § 100.701, specifies the location of the special local regulation for the Palm Beach Holiday Boat Parade, which encompasses a moving buffer zone of 50 yards around the parade as it travels along the Intracoastal Waterway in Palm Beach, FL. Only event sponsor designated participants and official patrol vessels will be allowed to enter the regulated area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at a safe speed without loitering.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will inform the public through Local Notice to Mariners and marine information broadcasts at least 24 hours in advance of the enforcement of the special local regulation.

Dated: October 31, 2019.

J.F. Burdian,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2019–24131 Filed 11–4–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0728]

Special Local Regulation: Seminole Hard Rock Winterfest Holiday Boat Parade

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation on December 14, 2019 to provide for the safety and security of navigable waterways during the Seminole Hard Rock Winterfest Holiday Boat Parade. During the enforcement period, all non-participant persons and vessels will be prohibited from entering, transiting, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative. The operator of any vessel in the regulated area must comply with instructions from the Coast Guard or designated representative.

DATES: The regulation in 33 CFR 100.701, Table to § 100.701, Line 10 will be enforced on December 14, 2019 from 6:30 p.m. through 11:00 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard: Telephone: 305–535–4317, Email: *Omar.Beceiro@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation for the Seminole Hard Rock Winterfest Holiday Boat Parade published in 33 CFR 100.701, Table to § 100.701, Line 10 on December 14, 2019 from 6:30 p.m. through 11:00 p.m. This action is being taken to provide for the safety and security of navigable waterways during this one-day event. Our regulation for marine events within the Seventh Coast Guard District, § 100.701, specifies the location of the special local regulation for the Seminole Hard Rock Winterfest Holiday Boat Parade, which encompasses a 50-yard, moving buffer zone around the parade as it travels along the New River and Intracoastal Waterway in Ft. Lauderdale, FL. Only event sponsor designated participants and official patrol vessels will be allowed to enter the regulated area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at a safe speed without loitering.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will inform the public through Local Notice to Mariners and marine information broadcasts at least 24 hours in advance of the enforcement of the special local regulation.

Dated: October 31, 2019.

J.F. Burdian,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2019–24132 Filed 11–4–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[USCG–2019–0875]

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

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

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

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

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

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class Glenn Grayer, Office of Regulations and Administrative Law, telephone (202) 372–3862.

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

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

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

Docket No.	Rule type	Location	Effective date
USCG–2019–0144	Safety Zones (Part 165)	Lake Michigan	3/15/2019
USCG–2019–0141	Special Local Regulations (Part 100)	Key West, FL	3/26/2019
USCG–2019–0389	Safety Zones (Part 165)	Rice's Landing, PA	6/7/2019
USCG–2019–0490	Safety Zones (Part 165)	Captain of the port zone	6/21/2019
USCG–2019–0374	Safety Zones (Part 165)	Friday Harbor, WA	7/1/2019
USCG–2012–1036	Safety Zones (Part 165)	Port Long Island Sound Zone	7/3/2019
USCG–2019–0377	Safety Zones (Part 165)	Calcasieu Parish, LA	7/3/2019
USCG–2019–0529	Safety Zones (Part 165)	St. Louis, MO	7/3/2019
USCG–2019–0511	Safety Zones (Part 165)	Lake Michigan, MI	7/3/2019
USCG–2019–0391	Safety Zones (Part 165)	Marathon, FL	7/4/2019
USCG–2019–0505	Safety Zones (Part 165)	Key West, FL	7/4/2019
USCG–2019–0365	Safety Zones (Part 165)	Wheeling, WV	7/4/2019
USCG–2019–0305	Safety Zones (Part 165)	Monongahela, PA	7/4/2019
USCG–2012–1036	Safety Zones (Part 165)	Port Long Island Sound Zone	7/4/2019
USCG–2019–0267	Safety Zones (Part 165)	Baltimore, MD	7/4/2019
USCG–2019–0550	Safety Zones (Part 165)	Washington, DC	7/4/2019
USCG–2019–0316	Special Local Regulations (Part 100)	Sarasota, FL	7/6/2019
USCG–2019–0363	Safety Zones (Part 165)	Toronto, OH	7/6/2019
USCG–2019–0538	Safety Zones (Part 165)	Glenbrook, NV	7/12/2019
USCG–2019–0578	Special Local Regulations (Part 100)	Charlevoix, MI	7/13/2019
USCG–2019–0532	Safety Zones (Part 165)	Harbor, Boston, MA	7/13/2019
USCG–2019–0016	Safety Zones (Part 165)	Oak Ridge, TN	7/19/2019
USCG–2019–0628	Safety Zones (Part 165)	San Juan, PR	7/19/2019
USCG–2019–0647	Safety Zones (Part 165)	Milwaukee, WI	7/25/2019
USCG–2019–0646	Safety Zones (Part 165)	San Diego, CA	7/26/2019
USCG–2019–0627	Safety Zones (Part 165)	Chicago, IL	7/27/2019
USCG–2019–0643	Safety Zones (Part 165)	New York Zone	7/27/2019
USCG–2019–0592	Regulated Navigation Area (Part 165)	Seattle, WA	8/1/2019
USCG–2019–0573	Safety Zones (Part 165)	Seattle, WA	8/1/2019
USCG–2019–0650	Safety Zones (Part 165)	Hudson River, NY	8/3/2019

Docket No.	Rule type	Location	Effective date
USCG–2019–0630	Safety Zones (Part 165)	Port Lake Michigan Zone	8/3/2019
USCG–2019–0642	Safety Zones (Part 165)	Pittsburgh, PA	8/4/2019
USCG–2019–0679	Safety Zones (Part 165)	Indian Island, WA	8/6/2019
USCG–2019–0658	Safety Zones (Part 165)	Monongahela, PA	8/10/2019
USCG–2019–0675	Safety Zones (Part 165)	Chicago, IL	8/10/2019
USCG–2019–0709	Security Zones (Part 165)	Monaca, PA	8/13/2019
USCG–2019–0710	Safety Zones (Part 165)	Oshkosh, WI	8/15/2019
USCG–2019–0688	Special Local Regulations (Part 100)	Greenville, MS	8/17/2019
USCG–2012–1036	Safety Zones (Part 165)	Long Island Zone	8/17/2019
USCG–2019–0644	Special Local Regulations (Part 100)	Atlantic City, NJ	8/19/2019
USCG–2019–0737	Safety Zones (Part 165)	Cox Bay, LA	8/21/2019
USCG–2019–0605	Safety Zones (Part 165)	Harve de Grace, MD	8/24/2019
USCG–2019–0722	Safety Zones (Part 165)	Lakeside, OH	8/31/2019
USCG–2019–0730	Safety Zones (Part 165)	Carnelian Bay, CA	8/31/2019
USCG–2019–0706	Safety Zones (Part 165)	Pittsburg, PA	8/31/2019
USCG–2019–0761	Safety Zones (Part 165)	Miami Port Zone	8/31/2019
USCG–2019–0671	Safety Zones (Part 165)	Tahoe City, CA	8/31/2019
USCG–2019–0762	Safety Zones (Part 165)	Detroit, MI	9/1/2019
USCG–2019–0636	Safety Zones (Part 165)	Laughlin, NV	9/1/2019
USCG–2019–0445	Safety Zones (Part 165)	Oyster Bay, NY	9/2/2019
USCG–2019–0088	Security Zones (Part 165)	Jacksonville, FL	9/3/2019
USCG–2019–0759	Safety Zones (Part 165)	Chicago, IL	9/7/2019
USCG–2019–0231	Special Local Regulations (Part 100)	Evansville, IL	9/14/2019
USCG–2019–0689	Safety Zones (Part 165)	Islamorada, FL	9/14/2019
USCG–2019–0778	Safety Zones (Part 165)	Philadelphia, PA	9/14/2019
USCG–2019–0651	Safety Zones (Part 165)	Manhattan, NY	9/15/2019
USCG–2019–0807	Safety Zones (Part 165)	Chicago, IL	9/21/2019
USCG–2019–0817	Safety Zones (Part 165)	Chicago, IL	9/25/2019
USCG–2019–0816	Safety Zones (Part 165)	Muscle Shoals, AL	9/27/2019
USCG–2012–1036	Special Local Regulations (Part 100)	Long Island Sound, NY	9/28/2019
USCG–2019–0806	Security Zones (Part 165)	Pittsburg, PA	9/30/2019

Dated: October 31, 2019.

M.W. Mumbach,

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

[FR Doc. 2019–24119 Filed 11–4–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0331; FRL–10001–88–Region 5]

Air Plan Approval; Illinois; NAAQS Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Illinois State implementation plan (SIP). The revision, submitted on May 30, 2019, incorporates several revisions to the Illinois air pollution control rules entitled ''Part 243—Ambient Air Quality Standards'' related to the National Ambient Air Quality Standards (NAAQS). The revision updates the ''List of Designated Reference and Equivalent Methods'' in response to EPA rulemakings. In addition, Illinois addresses EPA's revocation of the 1971 sulfur dioxide and the 1978 lead NAAQS.

DATES: This final rule is effective on December 5, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0331. 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. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is being addressed in this document?

This rule acts on the May 30, 2019, request from the Illinois Environmental Protection Agency to incorporate revisions to Title 35 of the Illinois Administrative Code, Part 243—Air Quality Standards (Part 243). The background for today's action is discussed in detail in EPA's proposal, dated August 15, 2019 (84 FR 41672).

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

EPA provided a 30-day review and comment period for the August 15, 2019 proposed rule. The comment period ended on September 16, 2019. We received no adverse comments on the proposed rule.

EPA did, however, receive one anonymous comment. The commenter was unable to access the submission materials for the Illinois 2018 NAAQS Update, R19–6, through the online docket at *www.regulations.gov,* and

therefore suggested the comment period be extended another 30 days. According to the document information on *www.regulations.gov,* the submission materials were posted on September 11, 2019. The comment was posted on September 17, 2019. EPA's August 15, 2019 proposed rule included contact information for the EPA Region 5 office, which could have assisted the commenter with accessing or receiving the submission materials, but EPA has no record of the commenter making such contact. Furthermore, since the commenter did not explain (or provide a legal basis for) how the final rule should differ in any way from the proposed action, and made no specific mention of the substantive aspects of the proposed action, the comment is not germane to this rulemaking. Therefore, EPA will not extend comment period for another 30 days.

III. What action is EPA taking?

EPA is approving a revision to Part 243 of the Illinois SIP.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois regulations described in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act (CAA) as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 expected to be an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 January 6, 2020. 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) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 24, 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 § 52.720, the table in paragraph (c) is amended by revising the entries ''243.108'', ''243.120'', ''243.122'', ''243.125'', and ''243.126'' to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

[1] 62 FR 27968 (May 22, 1997).

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
* * *	*	*	* *	* *
Subchapter I: Air Quality Standards and Episodes				
Part 243: Air Quality Standards				
Subpart A: General Provisions				
* * *	*	*	* *	* *
243.108	Incorporation by Reference.	2/19/2019	11/5/2019, [insert **Federal Register** citation].	
Subpart B: Standards and Measurements				
243.120	PM_{10} and $PM_{2.5}$	2/19/2019	11/5/2019, [insert **Federal Register** citation].	
243.122	Sulfur Oxides (Sulfur Dioxide).	2/19/2019	11/5/2019, [insert **Federal Register** citation].	
* * *	*	*	* *	* *
243.125	Ozone	2/19/2019	11/5/2019, [insert **Federal Register** citation].	
243.126	Lead	2/19/2019	11/5/2019, [insert **Federal Register** citation].	
* * *	*	*	* *	* *

* * * * *

[FR Doc. 2019–24068 Filed 11–4–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2407–FN]

RIN 0938–ZB42

Basic Health Program; Federal Funding Methodology for Program Years 2019 and 2020

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

ACTION: Final methodology.

SUMMARY: This document provides the methodology and data sources necessary to determine federal payment amounts for program years 2019 and 2020 to states that elect to establish a Basic Health Program under the Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Affordable Insurance Exchanges.

DATES: Effective January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Cassandra Lagorio, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Basic Health Program

Section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred to as the Affordable Care Act) provides states with an option to establish a Basic Health Program (BHP). In the states that elect to operate a BHP, the BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the federal poverty level (FPL) who are not otherwise eligible for Medicaid, the Children's Health Insurance Program (CHIP), or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present non-citizens ineligible for Medicaid. For those states that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act).

A BHP provides another option for states in providing affordable health benefits to individuals with incomes in the ranges described above. States may find a BHP a useful option for several reasons, including the ability to potentially coordinate standard health plans in the BHP with their Medicaid managed care plans, or to potentially reduce the costs to individuals by lowering premiums or cost-sharing requirements.

Federal funding for a BHP under section 1331(d)(3)(A) of the Affordable Care Act is based on the amount of premium tax credit (PTC) and cost-sharing reductions (CSRs) that would have been provided for the fiscal year to eligible individuals enrolled in BHP standard health plans in the state if such eligible individuals were allowed to enroll in a qualified health plan (QHP) through Affordable Insurance Exchanges (''Exchanges''). These funds are paid to trusts established by the states and dedicated to the BHP, and the states then administer the payments to standard health plans within the BHP.

In the March 12, 2014 **Federal Register** (79 FR 14112), we published a

final rule entitled ''Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity'' (hereinafter referred to as the BHP final rule) implementing section 1331 of the Affordable Care Act, which governs the establishment of BHPs. The BHP final rule established the standards for state and federal administration of BHPs, including provisions regarding eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codifies the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHPs, as well as the operation of the Exchanges. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP Payment Notice. The proposed BHP Payment Notice would be published in the **Federal Register** in October, 2 years prior to the applicable program year,[1] and would describe the proposed funding methodology for the relevant BHP program year, including how the Secretary considered the factors specified in section 1331(d)(3) of the Affordable Care Act, along with the proposed data sources used to determine the federal BHP payment rates for the applicable BHP program year. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP funding methodology, as well as the federal BHP payment rates for the applicable BHP program year. For example, payment rates in the final BHP Payment Notice published in February 2020 would apply to BHP program year 2021, beginning in January 2021. As discussed in section III.C. of this final notice, and as referenced in 42 CFR 600.610(b)(2), state data needed to calculate the federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology for the applicable program year has been published, we will only make modifications to the BHP funding methodology on a prospective basis, with limited exceptions. The BHP final rule provided that retrospective adjustments to the state's BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits adjustments to a state's federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the applicable final BHP Payment Notice. For example, the population health factor adjustment described in section III.D.3 of this final notice allows for a retrospective adjustment (at the state's option) to account for the impact that BHP may have had on the individual market risk pool and QHP premiums in the Exchange. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(ii) of the Affordable Care Act, the funding methodology and payment rates are expressed as an amount per eligible individual enrolled in a BHP standard health plan (BHP enrollee) for each month of enrollment. These payment rates may vary based on categories or classes of enrollees. Actual payment to a state would depend on the actual enrollment of individuals found eligible in accordance with a state's certified BHP Blueprint [2] eligibility and verification methodologies in coverage through the state BHP. A state that is approved to implement a BHP must provide data showing quarterly enrollment of eligible individuals in the various federal BHP payment rate cells. Such data must include the following:

- Personal identifier;
- Date of birth;
- County of residence;
- Indian status;
- Family size;
- Household income;
- Number of persons in household enrolled in BHP;
- Family identifier;
- Months of coverage;
- Plan information; and
- Any other data required by CMS to properly calculate the payment.

B. 2018 Funding Methodology and Changes in Final Administrative Order

In the February 29, 2016 **Federal Register** (81 FR 10091), we published the final notice entitled ''Basic Health Program; Federal Funding Methodology for Program Years 2017 and 2018'' (hereinafter referred to as the February 2016 payment notice) that sets forth the methodology that would be used to calculate the federal BHP payments for the 2017 and 2018 program years. Updated factors for the program year 2018 federal BHP payments were provided in the CMCS Informational Bulletin, ''Basic Health Program; Federal Funding Methodology for Program Year 2018'' on May 17, 2017.[3]

On October 11, 2017, the Attorney General of the United States provided the Department of Health and Human Services and the Department of the Treasury with a legal opinion indicating that the permanent appropriation at 31 U.S.C. 1324, from which the Departments had historically drawn funds to make CSR payments, cannot be used to fund CSR payments to insurers. In light of this opinion—and in the absence of any other appropriation that could be used to fund CSR payments—the Department of Health and Human Services directed us to discontinue CSR payments to issuers until Congress provides for an appropriation. In the absence of a Congressional appropriation for federal funding for CSRs, we cannot provide states with a federal payment attributable to CSRs that BHP enrollees would have received had they been enrolled in a QHP through an Exchange.

Starting with the payment for the first quarter (Q1) of 2018 (which began on January 1, 2018), we stopped paying the CSR component of the quarterly BHP payments to New York and Minnesota (the states), the only states operating a BHP in 2018. The states then sued the Secretary for declaratory and injunctive relief in the United States District Court for the Southern District of New York. *See State of New York, et al,* v. *U.S. Department of Health and Human Services,* 18–cv–00683 (S.D.N.Y. filed Jan. 26, 2018). On May 2, 2018, the parties filed a stipulation requesting a stay of the litigation so that HHS could issue an administrative order revising the 2018 BHP payment methodology. As a result of the stipulation, the court dismissed the BHP litigation. On July 6, 2018, we issued a Draft Administrative

[1] BHP program years span from January to December.

[2] The BHP Blueprint is a comprehensive written document submitted by the state to the HHS Secretary to establish compliance with program requirements. For more information on the BHP Blueprint, please see 42 CFR 600.610.

[3] Available at *https://www.medicaid.gov/federal-policy-guidance/downloads/cib051717.pdf.*

Order on which New York and Minnesota had an opportunity to comment. Each state submitted comments. We considered the states' comments and issued a Final Administrative Order on August 24, 2018 (Final Administrative Order) setting forth the payment methodology that would apply to the 2018 BHP program year.

The payment methodology we are finalizing in this final notice applies the methodology described in the Final Administrative Order to program years 2019 and 2020, with one additional adjustment, the Metal Tier Selection Factor (MTSF), that will apply for program year 2020 only.

On the Exchange, if an enrollee chooses a QHP and the value of the PTC to which the enrollee is entitled is greater than the premium of the selected plan, then the PTC is reduced to be equal to the premium. This usually occurs when enrollees eligible for larger PTCs choose bronze-level QHPs, which typically have lower premiums on the Exchange than silver-level QHPs. Prior to 2018, we believed that the impact of these choices and plan selections on the amount of PTCs that the federal government paid was relatively small. During this time, most enrollees in income ranges up to 200 percent of FPL chose silver-level QHPs, and in most cases where enrollees chose bronze-level QHPs, the premium was still more than the PTC. Based on our analysis of the percentage of persons with incomes below 200 percent of FPL choosing bronze-level QHPs and the average reduction in the PTCs paid for those enrollees, we believe that the total PTCs paid for persons with incomes below 200 percent of FPL were reduced by about 1 percent in 2017. We believe that the magnitude of this effect was similar from 2014 to 2016 as well. Therefore, we did not seek to make an adjustment based on the effect of enrollees choosing non-silver-level QHPs in developing the BHP payment methodology applicable to program years prior to 2018. However, after the discontinuance of the CSR payments in October 2017, several changes occurred that increased the expected impact of enrollees' plan choices on the amount of PTC paid, as further described in section III.D.6 of this final notice. These changes led to a larger percentage of individuals choosing bronze-level QHPs, and for those individuals who chose bronze-level QHPs, these changes also generally led to larger reductions in PTCs paid by the federal government per individual. The combination of more individuals with incomes below 200 percent of FPL choosing bronze-level QHPs and the reduction in PTCs had an impact on PTCs paid by the federal government for enrollees with incomes below 200 percent of FPL. Therefore, we believe that the impacts due to enrollees' plan choices are now larger, have become material, and are now a relevant factor necessary for purposes of determining the payment amount as set forth by section 1331(d)(3)(A)(ii) of the Affordable Care Act.

Thus, we proposed and are finalizing an adjustment to account for the impact of individuals selecting different metal tier level plans in the Exchange, which we refer to as the Metal Tier Selection Factor (MTSF). We will include the MTSF in the methodology for program year 2020, and we will not include the MTSF in the methodology for program year 2019. Please see section III.D.6 of this final notice for a more detailed discussion of the MTSF.

As specified in the BHP proposed payment notice for program years 2019 and 2020, we have been making BHP payments for program year 2019 using the methodology described in the Final Administrative Order. Payments issued to states for 2019 will be conformed to the rates applicable to the finalized 2019 payment methodology established in this final notice through reconciliation. If a state chooses to change its premium election for 2019, we will also apply that change through reconciliation.

The scope of this final notice is limited to only the final payment methodologies for 2019 and 2020, and any payment methodology for a future year will be proposed and finalized through other rulemaking.

II. Summary of Proposed Provisions and Analysis of and Responses to Public Comments

The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses. We received a total of 47 timely comments from individuals and organizations, including, but not limited to, state Medicaid agencies, health plans, health care providers, advocacy organizations, and research groups.

For a complete and full description of the BHP proposed funding methodology for program years 2019 and 2020, see the ''Basic Health Program; Federal Funding Methodology for Program Years 2019 and 2020'' proposed notice published in the April 2, 2019 **Federal Register** (84 FR 12552) (hereinafter referred to as the April 2019 proposed payment notice).

A. Background

In the April 2019 proposed payment notice, we proposed the methodologies for how the federal BHP payments would be calculated for program years 2019 and 2020.

We received the following comments on the background information included in the April 2019 proposed payment notice:

Comment: Some commenters expressed general support for the BHP.

Response: We appreciate the support from these commenters; however, since the comments were not specific to the BHP payment methodologies for program years 2019 or 2020, they are outside the scope of this rulemaking and will not be addressed in this final rule.

B. Overview of the Funding Methodology and Calculation of the Payment Amount

We proposed in the overview of the funding methodology to calculate the PTC and CSR as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the advance payments of the PTC and CSR, and by the Internal Revenue Service (IRS) to calculate the allowable PTC. We proposed four equations (1, 2a, 2b, and 3) that would, if finalized, compose the overall BHP payment methodology.

Comment: Many commenters recommended that CMS not include the MTSF in the 2019 and 2020 BHP payment methodologies and offered several rationales for not adopting the MTSF. Many commenters stated that CMS should only make changes to the BHP payment methodology for future program years. Two commenters expressed concern about the timing for publication of the proposed and final payment methodologies, including the proposed introduction of the MTSF for 2019 and 2020. Several commenters questioned if the rationale for including the MTSF in the 2019 and 2020 payment methodologies was sufficient, and some commenters specifically questioned whether the changes to the percentage of enrollees choosing bronze-level QHPs and the decrease in the PTCs for these enrollees were significant. Many commenters noted that we found that the percentage of enrollees with incomes below 200 percent of FPL choosing bronze-level QHPs rose by a small percentage (from 11 percent in 2017 to 13 percent in 2018), and stated that this increase was insufficient to justify including the MTSF in the payment methodology. Some commenters also stated that individuals in non-BHP states could have enrolled in bronze-level QHPs prior to 2018, asserting that CMS should have accounted for that possibility starting in the beginning of the BHP instead of waiting several years.

Some commenters stated that the MTSF is inappropriate because BHPs are prohibited from offering bronze-level coverage to their enrollees.

Several commenters questioned whether the statute permits CMS to include the MTSF in the payment methodology, as the MTSF is not explicitly identified in the statute.

Several commenters disagreed with including the MTSF because it would decrease federal funding and increase state costs for BHP, or else result in decreased benefits for BHP enrollees.

Some commenters also stated that the trend of increased bronze-level QHP enrollment and the increase in silver-level QHP premiums for 2017 and 2018 has slowed and/or reversed between 2018 and 2019, and questioned whether the MTSF should be applied. Some commenters cited analysis from the Kaiser Family Foundation of plan selection by metal tier, which states that the percentage of enrollees nationwide across all income levels that selected or were auto-enrolled in bronze-level QHPs during open enrollment increased by about 6 percent from 2017 to 2018 (from 22.9 percent in 2017 to 28.6 percent in 2018) and by about 2 percent from 2018 to 2019 (from 28.6 percent to 30.6 percent).[4]

In addition, commenters cited an analysis by the Kaiser Family Foundation on QHP premium levels by state and by metal tier,[5] which states that the national average lowest cost bronze-level QHP premium increased by 17.6 percent from 2017 to 2018, and decreased by 0.6 percent from 2018 to 2019.[6] This analysis also found that the national average benchmark silver-level QHP premium increased by 34.0 percent from 2017 to 2018 and decreased by 0.8 percent from 2018 to 2019.[7] The ratio of the national average benchmark silver-level QHP premium to the lowest cost bronze-level QHP premium in this analysis increased from 123.8 percent in 2017 to 141.1 percent in 2018, and then decreased to 140.7 percent in 2019.[8]

Response: We adopted the schedule reflected in § 600.610 to align with the approach for how payment parameters for Exchanges are determined as well as how CHIP allotments were determined during the initial implementation of the program.[9] The schedule is also intended to provide a state the information it needs to appropriately budget for BHP each year.[10] We recognize the timeline was not followed each year and are considering whether modifications to the schedule captured in regulation are appropriate based on lessons learned and experience with the BHP. We would propose any such changes through notice and comment rulemaking to allow stakeholders and interested parties an opportunity to comment. After consideration of the comments received, and further analysis of timing considerations, for 2019 we are finalizing our proposal to apply the methodology described in the Final Administrative Order, and we are not finalizing our proposal to apply the MTSF in 2019.

For program year 2020, we are finalizing our proposal to apply the methodology described in the Final Administrative Order and to apply the MTSF. We also proposed to update the value of the MTSF for 2020 with 2019 data. However, since the 2019 PTC and enrollment data necessary to update the factor are not available at this time, we will apply the MTSF at the value of 97.04 percent for 2020. We believe that applying the MTSF value based on 2018 data is appropriate because the discontinuation of CSR payments to issuers continued in 2019 as Congress has not provided an appropriation for those payments. In addition, our analysis of preliminary 2019 data that is available suggests that the value of the MTSF would be similar (likely within 0.5 percentage points of the value of the MTSF based on 2018 data), which further supports using 2018 data as the basis for calculating the 2020 MTSF value. Please see section III.D.6. of this final notice for a description of how the MTSF was calculated.

As detailed in the April 2019 proposed payment notice and in this final notice, we continue to believe that it is appropriate to update the methodology for 2020 to take the MTSF into account following the discontinuance of the CSR payments due to several changes that occurred that increased the impact of enrollees' plan choices on the amount of PTC paid by the federal government. First, silver-level QHP premiums increased at a higher percentage in comparison to the increase in premiums of other metal-tier plans in many states starting in 2018 (on average, the national average benchmark silver-level QHP premium increased about 17 percent more than the national average lowest-cost bronze-level QHP premium). Second, there was an increase in the percentage of enrollees with incomes below 200 percent of FPL choosing bronze-level QHPs. Third, the likelihood that a person choosing a bronze-level QHP would pay $0 premium also increased, as the difference between the bronze-level QHP premium and the full value of APTC widened. Finally, the average estimated reduction in APTC for enrollees with incomes below 200 percent of FPL that chose bronze-level QHPs in 2017 compared to 2018 increased. Our analysis of 2017 and 2018 data documents these effects.

In 2017, prior to the discontinuance of CSR payments, 11 percent of QHP enrollees with incomes below 200 percent of FPL elected to enroll in bronze-level QHPs, and on average the PTC paid on behalf of those enrollees was 11 percent less than the full value of APTC. In 2018, after the discontinuance of the CSR payments, 13 percent of QHP enrollees with incomes below 200 percent of FPL chose bronze-level QHPs, and on average, the PTC paid on behalf of those enrollees was 23 percent less than the full value of the APTC. In addition, the ratio of the national average silver-level QHP premium to the national average bronze-level plan premium increased from 17 percent higher in 2017 to 33 percent higher in 2018. While the increase in the percentage of QHP enrollees with incomes below 200 percent of FPL who elected to enroll in bronze-level QHPs between 2017 and 2018 is about 2 percent, the accompanying percentage reduction of the PTC paid by the federal government for QHP enrollees with incomes below 200 percent of FPL more than doubled between 2017 and 2018. Consistent with section 1331(d)(3) of the Affordable Care Act, which requires payments to states be based on what would have been provided if BHP eligible individuals were allowed to enroll in QHPs, we believe it is appropriate to consider how individuals would have chosen different plans—including across metal tiers—as part of

[4] *https://www.kff.org/health-reform/state-indicator/marketplace-plan-selections-by-metal-level-2/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D. https://www.kff.org/health-reform/state-indicator/marketplace-plan-selections-by-metal-level-2/.*

[5] *https://www.kff.org/health-reform/state-indicator/average-marketplace-premiums-by-metal-tier/.*

[6] *https://www.kff.org/health-reform/state-indicator/average-marketplace-premiums-by-metal-tier/.*

[7] *https://www.kff.org/health-reform/state-indicator/average-marketplace-premiums-by-metal-tier/.*

[8] *https://www.kff.org/health-reform/state-indicator/average-marketplace-premiums-by-metal-tier/.*

[9] See the Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity; Proposed Rule; 78 FR 59122 at 59135 (September 25, 2013).

[10] Ibid.

the BHP payment methodology and are finalizing the application of the MTSF for program year 2020.

Regarding comments that BHPs are prohibited from providing bronze-level coverage to enrollees and thus the BHP payment methodology should not assume enrollees would have chosen bronze-level QHPs in the Exchange, section 1331(d)(3)(A)(ii) of the Affordable Care Act directs the Secretary to ''take into account all relevant factors necessary to determine the value of the'' PTCs and CSRs that would have been provided to eligible individuals if they would have enrolled in QHPs through an Exchange. We further note the statute does not set forth an exhaustive list of what those necessary relevant factors are, providing the Secretary with discretion and authority to identify and take into consideration factors that are not specifically enumerated in the statute. In addition, section 1331(d)(3)(A)(ii) of the Affordable Care Act requires the Secretary to ''take into consideration the experience of other States with respect to participation on Exchanges and such credit and reductions provided to residents of the other States, with a special focus on enrollees with income below 200 percent of poverty.''

We believe that the data sources that commenters submitted regarding bronze-level QHP enrollment and the data sources comparing the increases in silver-level QHP premiums and bronze-level QHP premium support, not undermine, our position that the MTSF is a relevant factor that should be taken into account in the BHP payment methodology. As previously stated, we believe that the MTSF is a relevant factor because of the combined effects of increased bronze-level QHP enrollment and the reduction of PTCs paid by the federal government subsequent to the discontinuation of CSRs. The data sources submitted by the commenters show increases in bronze-level QHP enrollment in both 2018 and 2019. We note that the commenters did not submit data sources pertaining to bronze-level QHP enrollment specifically for enrollees with incomes less than 200 percent of FPL. In addition, the analysis cited by commenters shows that the average ratio of the national average silver-level benchmark QHP premium to the average lowest cost bronze-level QHP premium remained almost exactly the same (141.1 percent in 2018, 140.7 percent in 2019). This data supports the conclusion that there is a continued effect of material reductions in the amount of PTCs made by the federal government as a result of the discontinuation of CSRs. We anticipate updating the MTSF value as necessary and appropriate in future years.

We recognize that applying the MTSF would reduce BHP funding, but we nonetheless believe that incorporating the MTSF into the BHP payment methodology for program year 2020 accurately reflects the changes in PTCs after the federal government stopped making CSR payments and is consistent with section 1331(d)(3)(A)(ii) of the Affordable Care Act. Regarding the comments about the potential impact of reduced BHP funding on benefits available under BHPs, we note that the benefits requirements at § 600.405 are still applicable and therefore benefits available under BHPs should not be impacted.

Comment: Several commenters questioned the methodology in calculating the MTSF. One commenter noted that while most states permit age rating, some states (including New York) do not use age rating and other states' varying rating practices could result in variability in the calculation of BHP payments. Several commenters stated that CMS should not rely on the experience from other states in calculating the BHP payments, specifically with regard to the MTSF. In particular, some commenters suggested that the MTSF for New York should rely on the experience of bronze-level QHP selection from 2015. These commenters stated the experience in New York in 2015—before BHP was fully implemented—showed that a smaller percentage of enrollees with incomes below 200 percent of FPL chose bronze-level QHPs than the percentage of such enrollees nationwide who chose bronze-level QHPs nationwide in 2017. Some commenters also stated that the amount of PTC reduction for these enrollees in New York in 2015 was about $12 per enrollee per month. These commenters recommended that these figures be used to develop the MTSF for New York's BHP payments. Some commenters also suggested applying the percentage increases in the enrollees choosing bronze-level QHPs and the PTC reduction to the 2015 experience for New York's BHP payments. Some commenters cited New York's enrollment assistance efforts as the reason for a smaller percentage of enrollees choosing bronze-level QHPs in 2015.

Response: We recognize that New York requires pure community rating (and does not permit age rating); however, the BHP statute directs the Secretary to take into consideration the experience of other states when developing the payment methodology [11] and doing so is a reasonable basis for calculating the MTSF. In general, the increases in the silver-level QHP premiums due to the discontinuance of CSR payments were fairly similar across most states [12] and we expect that enrollees' decisions about which metal tier plan to enroll in is generally comparable across all states. Fundamentally, enrollees in each state are making decisions under similar conditions comparing silver-level QHPs to other metal tier plans. It is not clear how states that use different rating rules (age rating or pure community rating) would have significantly different experiences in the amounts added to the QHP premiums after the discontinuation of CSRs, nor is it obvious that the use of one set of rating rules would lead to larger or smaller effects on the QHP premiums than another set of rules. We also note that the BHP payment rates are developed consistent with the state's rules on age rating since the beginning of the BHP, and we are continuing this policy for the payment methodologies finalized in this rulemaking for program years 2019 and 2020. As such, the impact of age rating, or the prohibition of age rating, in a BHP state has and will be reflected in the BHP payment methodology, and it is unnecessary to account for these state-specific differences as part of the MTSF.

In addition, we believe that using 2015 data, as the basis for the MTSF is not appropriate. Premiums and enrollment patterns have changed over time, including changes in bronze-level and silver-level QHP premiums, changes in the ratio of the silver-level to bronze-level QHP premiums, and changes to the amount of PTC paid by the federal government. While 2015 data provides some evidence of consumer plan selections prior to the full implementation of New York's BHP, we do not believe that the 2015 data should be relied upon for the development of MTSF for the following reasons. First, New York did not begin implementing its BHP until April 2015 (and did not fully implement BHP until 2016). Second, the 2015 data predates the discontinuance of the CSR payments in 2017 and the subsequent adjustments to premiums in 2018 (particularly to

[11] Section 1331(d)(3)(A)(ii) of the Affordable Care Act.

[12] Based on data collected from QHPs to develop the PAF. In addition, information collected by the Kaiser Family Foundation also shows similar increases across states. See *https://www.kff.org/health-reform/issue-brief/how-the-loss-of-cost-sharing-subsidy-payments-is-affecting-2018-premiums/*.

silver-level QHP premiums). Therefore, relying on data from 2015 does not capture the more recent experience of New York and/or other states subsequent to the discontinuation of CSRs, which the MTSF is intended to reflect.

We also note that the statute does not require the Secretary to address every difference in Exchange operations among the states (including, but not limited to, enrollment assistance efforts by individual Exchanges). Instead, section 1331(d)(3)(A)(ii) of the Affordable Care Act directs the Secretary to take into account ''all relevant factors necessary'' when establishing the payment methodology. We further believe that it is not practicable to address every potential difference in Exchange operations, and that not every potential difference in Exchange operations would be a relevant factor necessary to take into account.

Comment: Several commenters stated that they believed CMS did not have the authority to exclude payment for the CSR portion of the BHP payment rate. In addition, several other commenters recommended that CMS add back the CSR portion of the payment.

Response: As noted in the April 2019 proposed payment notice, in light of the Attorney General's opinion regarding CSR payments—and in the absence of any other appropriation that could be used to fund CSR payments—HHS directed CMS to discontinue CSR payments to issuers until Congress provides for an appropriation. In the absence of a Congressional appropriation for federal funding for CSRs, we also cannot provide states with a federal payment attributable to CSRs that BHP enrollees would have received had they been enrolled in a QHP through an Exchange.

Comment: Several commenters discussed the interactions between the reinsurance waiver approved for Minnesota under section 1332 of the Affordable Care Act (''Minnesota reinsurance section 1332 waiver'') and Minnesota's BHP. Some commenters expressed concern that the pass-through funding amounts that Minnesota receives from the federal government under the Minnesota reinsurance section 1332 waiver are lower than they should be, as the Minnesota BHP is not taken into account in those calculations because BHP enrollees are not eligible to enroll in QHPs. Some commenters observed that the Minnesota reinsurance section 1332 waiver reduced premiums in Minnesota, noting this has led to a lower BHP funding amount for Minnesota because the PTC values are therefore lower. One commenter stated that CMS did not take into consideration the experience of other states, particularly states without reinsurance programs where premiums were likely higher, in the BHP payment methodology. One commenter recommended that CMS interpret section 1331(d)(3)(A)(ii) of the Affordable Care Act as to consider the Minnesota reinsurance section 1332 waiver as a relevant factor necessary in determining the payment amount under the BHP payment methodology by basing Minnesota's value of PTC for BHP on what the state's reference premium would be absent the state-based reinsurance program. In addition, a commenter questioned the appropriateness of considering the experience of other states with respect to bronze-level QHP selections for purposes of Minnesota's BHP payments when BHP eligible individuals in Minnesota cannot enroll in bronze-level QHPs and CMS did not take into consideration the experience of other states without reinsurance programs.

Response: Calculations of pass-through funding amounts under section 1332 waivers are outside the scope of this rulemaking, which is specific to the BHP payment methodology for the 2019 and 2020 program years. We also note there are separate statutes governing section 1332 waivers and BHP, including separate provisions outlining the determination of payments under each program.[13] As detailed above, we believe it is appropriate to incorporate the MTSF in the 2020 BHP payment methodology and to calculate the MTSF, taking into consideration the experience of other states.

With respect to the comments regarding the BHP payment methodology and its application in Minnesota, we do not believe it would be appropriate to disregard the impact of the Minnesota reinsurance section 1332 waiver in determining BHP payments, because section 1331(d)(3)(A)(i) of the Affordable Care Act requires that the payment amount is what ''would have been provided for the fiscal year to eligible individuals enrolled in standard health plans in the State if such eligible individuals were allowed to enroll in qualified health plans through an Exchange.'' The Minnesota reinsurance section 1332 waiver lowers the premium that eligible individuals would pay if they were allowed to enroll in QHPs through the Exchange, and therefore is a necessarily relevant factor to take into account for purposes of determining the BHP payment amount because it has the effect of lowering the value of PTCs. Therefore, we do not believe it would be appropriate to base Minnesota's value of PTC for BHP payments based on what the state's reference premium would be absent the state-based reinsurance program. We further note that we do not take into consideration the experience of other states that do not have state-based reinsurance programs because the changes created by the Minnesota section 1332 reinsurance waiver directly affect the PTCs paid for enrollees participating in the Exchange in Minnesota. We believe taking into account the specific impact of the Minnesota section 1332 reinsurance waiver is the best reflection of the PTCs that would have been provided if BHP enrollees were allowed to enroll in a QHP through an Exchange and receive PTCs, as required by section 1331(d)(3)(A)(i) of the Affordable Care Act.

Regarding metal tier selection, as detailed above, we believe that considering which metal level plans enrollees would have selected if they were enrolled in QHPs through the Exchange is another relevant factor necessary to determine what would have been paid if eligible individuals in a BHP were allowed to enroll in QHPs through an Exchange. Consistent with the direction under the last sentence of section 1331(d)(3)(A)(ii) of the Affordable Care Act, when developing the MTSF, we took into consideration the experience of other states with respect to participation in an Exchange and the PTCs provided to residents of other states, with a special focus on enrollees with income below 200 percent of FPL. In the case of the MTSF, if not for the BHP, persons with incomes below 200 percent of FPL would be expected to enroll in QHPs on the Exchanges and receive PTC. Based on the current experience of states without BHPs, the cessation of CSR payments to issuers caused many QHP issuers to increase premiums to account for the costs of providing CSRs to consumers. The increased premiums caused PTCs to increase and led some enrollees to select bronze-level QHPs, which resulted in the federal government paying less than the full value of PTCs it would have paid had those enrollees selected silver-level QHPs. However, there is an important difference in the impact of the enrollee metal tier selection when considering how much PTC and CSRs would have been provided to individuals enrolled in a BHP if they were instead enrolled in a QHP on an

[13] See sections 1331 and 1332 of the Affordable Care Act.

Exchange in a state with a state reinsurance program. Holding all other things equal, in a state with a reinsurance program, we expect that the QHP premiums on the Exchange, as well as PTCs paid for eligible enrollees, would be similar with or without BHP in place. Thus, there would be no need to make a separate adjustment for the impacts of a state reinsurance program.

Comment: Several commenters recommended that the BHP payments should be sufficient to ensure that American Indian and Alaska Native enrollees in BHPs do not pay higher premiums than they would have paid if they had enrolled in a bronze-level QHP through an Exchange.

Response: Section 1331(a)(2)(A)(i) of the Affordable Care Act requires that states operating BHPs must ensure that individuals do not pay a higher monthly premium than they would have if they had been enrolled in the second lowest cost silver-level QHP in an Exchange, factoring in any PTC individuals would have received. Therefore, we have not adopted this recommendation.

Comment: Several commenters recommended that for the purpose of calculating BHP payments, CMS assume that American Indian and Alaska Native enrollees in BHPs would have enrolled in the second-lowest cost bronze-level QHP instead of the lowest-cost bronze-level QHP on the Exchanges.

Response: We did not propose and are not adopting this recommendation. The only portion of the rate affected by the use of the lowest-cost bronze-level QHP is the CSR portion of the BHP payment; due to the discontinuance of CSR payments and the accompanying modification to the BHP payment methodology, the CSR portion of the payment is assigned a value of 0, and any change to the assumption about which bronze-level QHP is used would therefore have no effect on the BHP payments.

C. Federal BHP Payment Rate Cells

In this section, we proposed that a state implementing BHP provide us with an estimate of the number of BHP enrollees it will enroll in the upcoming BHP program, by applicable rate cell, to determine the federal BHP payment amounts. For each state, we proposed using rate cells that separate the BHP population into separate cells based on the following factors: Age; geographic rating area; coverage status; household size, and income. For specific discussions, please refer to the April 2019 proposed payment notice.

We received no comments on this aspect of the proposed methodology. We are finalizing these policies as proposed.

D. Sources and State Data Considerations

We proposed in this section of the April 2019 proposed payment notice to use, to the extent possible, data submitted to the federal government by QHP issuers seeking to offer coverage through an Exchange that uses *HealthCare.gov* to determine the federal BHP payment cell rates. However, for states operating a State-based Exchange (SBE) that do not use *HealthCare.gov*, we proposed that such states submit required data for CMS to calculate the federal BHP payment rates in those states. For specific discussions, please refer to the April 2019 proposed payment notice.

We received no comments on this aspect of the proposed methodology. We are finalizing these policies as proposed, with one change. We proposed that a SBE interested in obtaining the applicable federal BHP payment rates for its state must submit such data accurately, completely, and as specified by CMS, by no later than 30 days after the publication of the final notice for CMS to calculate the applicable rates for 2019, and by no later than October 15, 2019, for CMS to calculate the applicable rates for 2020. Given the publication date for this final notice, we are modifying the timeline for submitting the applicable data for both program years 2019 and 2020. The data must be submitted by no later than 30 days after the publication of this final notice, which will allow states additional time to submit the required 2019 and 2020 data.

E. Discussion of Specific Variables Used in Payment Equations

In this section of the April 2019 proposed payment notice, we proposed eight specific variables to use in the payment equations that compose the overall BHP funding methodology. (seven variables are described in section III.D. of this final notice, and the premium trend factor is described in section III.E. of this final notice). For each proposed variable, we included a discussion on the assumptions and data sources used in developing the variables. For specific discussions, please refer to the April 2019 proposed payment notice.

We received several comments that related to the MTSF. Those comments and our responses are described in section II.B. of this final notice. We did not receive comments on any other factors, and are finalizing the other factors as proposed.

F. State Option To Use Prior Year QHP Premiums for BHP Payments

In this section of the April 2019 proposed payment notice, we proposed to provide states implementing BHP with the option to use the 2018 or 2019 QHP premiums multiplied by a premium trend factor to calculate the federal BHP payment rates instead of using the 2019 or 2020 QHP premiums, for the 2019 and 2020 BHP program years, respectively. For specific discussions, please refer to the April 2019 proposed payment notice.

We received no comments on this aspect of the proposed methodology. We are finalizing this policy as proposed.

G. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

In this section of the April 2019 proposed payment notice, we proposed to provide states implementing BHP the option to develop a methodology to account for the impact that including the BHP population in the Exchange would have had on QHP premiums based on any differences in health status between the BHP population and persons enrolled through the Exchange. For specific discussions, please refer to the April 2019 proposed payment notice.

We received no comments on this aspect of the methodology. We are finalizing this policy as proposed, with one change. We proposed to require a state that wanted to elect this option to submit its proposed protocol within 60 days of the publication of the final payment methodology for our approval for the 2019 program year, and by August 1, 2019 for the 2020 program year. Given the publication date of this final notice, we are modifying this timeline and will require a state electing this option to submit its proposed protocol within 60 days of the publication of this final notice for our approval for both the 2019 and 2020 program years, which will allow a state additional time to submit its proposed protocol for program years 2019 and 2020.

III. Provisions of the Final Methodology

A. Overview of the Funding Methodology and Calculation of the Payment Amount

Section 1331(d)(3) of the Affordable Care Act directs the Secretary to consider several factors when determining the federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC and CSRs that BHP enrollees would have been provided

had they enrolled in a QHP through an Exchange. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the advance payments of the PTC and CSRs, and by the IRS to calculate final PTCs. In general, we have relied on values for factors in the payment methodology specified in statute or other regulations as available, and have developed values for other factors not otherwise specified in statute, or previously calculated in other regulations, to simulate the values of the PTC and CSRs that BHP enrollees would have received if they had enrolled in QHPs offered through an Exchange. In accordance with section 1331(d)(3)(A)(iii) of the Affordable Care Act, the final funding methodology must be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the Affordable Care Act.

Section 1331(d)(3)(A)(ii) of the Affordable Care Act specifies that the payment determination shall take into account all relevant factors necessary to determine the value of the PTCs and CSRs that would have been provided to eligible individuals, including but not limited to, the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a QHP through an Exchange, and whether any reconciliation of PTC and CSR would have occurred if the enrollee had been so enrolled. Under the payment methodologies for 2015 (79 FR 13887) (published on March 12, 2014), for 2016 (80 FR 9636) (published on February 24, 2015), and for 2017 and 2018 (81 FR 10091) (published on February 29, 2016), the total federal BHP payment amount has been calculated using multiple rate cells in each state. Each rate cell represents a unique combination of age range, geographic area, coverage category (for example, self-only or two-adult coverage through the BHP), household size, and income range as a percentage of FPL, and there is a distinct rate cell for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. The BHP payment rates developed also are consistent with the state's rules on age rating. Thus, in the case of a state that does not use age as a rating factor on an Exchange, the BHP payment rates would not vary by age.

Under the methodology in the Final Administrative Order, the rate for each rate cell is calculated in two parts. The first part is equal to 95 percent of the estimated PTC that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. The second part, 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange, is assigned a value of zero because there is presently no available appropriation from which we can make the CSR portion of any BHP payment.

Equations (1a) and (1b) will be used to calculate the estimated PTC for eligible individuals enrolled in the BHP in each rate cell. We note that throughout this final notice, when we refer to enrollees and enrollment data, we mean data regarding individuals who are enrolled in the BHP who have been found eligible for the BHP using the eligibility and verification requirements that are applicable in the state's most recent certified Blueprint. By applying the equations separately to rate cells based on age, income and other factors, we effectively take those factors into account in the calculation. In addition, the equations reflect the estimated experience of individuals in each rate cell if enrolled in coverage through an Exchange, taking into account additional relevant variables. Each of the variables in the equations is defined in this section, and further detail is provided later in this section of this final notice. In addition, we describe in Equation (2a) and Equation (2b) how we proposed to calculate the adjusted reference premium (ARP) that is used in Equations (1a) and (1b).

Equations (1a) and (1b): Estimated PTC by Rate Cell

We will continue to calculate the estimated PTC, on a per enrollee basis, for each rate cell for each state based on age range, geographic area, coverage category, household size, and income range. We will calculate the PTC portion of the rate in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP, with the following adjustments. First, the PTC portion of the rate for each rate cell will represent the mean, or average, expected PTC that all persons in the rate cell would receive, rather than being calculated for each individual enrollee. Second, the reference premium (RP) (described in more detail later in the section) used to calculate the PTC will be adjusted for the BHP population health status, and in the case of a state that elects to use 2018 premiums for the basis of the BHP federal payment, for the projected change in the premium from 2018 to 2019, to which the rates announced in the final payment methodology would apply. These adjustments are described in Equation (2a) and Equation (2b). Third, the PTC will be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in the BHP; this adjustment, as described in section III.D.5. of this final notice, will account for the impact on the PTC that would have occurred had such reconciliation been performed. Fourth, for program year 2020, the PTC will be adjusted to account for the estimated impacts of plan selection; this adjustment, the MTSF, will reflect the effect on the average PTC of individuals choosing different metal-tier levels of QHPs. For program year 2019, the MTSF will not apply, and thus would not change the value of the PTC amount of the BHP payment. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the Affordable Care Act. We note that in the situation where the average income contribution of an enrollee would exceed the ARP, we will calculate the PTC to be equal to 0 and will not allow the value of the PTC to be negative.

We will use Equation (1a) to calculate the PTC rate for program year 2019 and Equation (1b) to calculate the PTC rate for program year 2020, consistent with the methodology described above:

$$\textbf{Equation (1a):}\ PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n} \right] \times IRF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
$ARP_{a,g,c}$ = Adjusted reference premium
$I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL
$j = j^{th}$ percentage-point increment FPL
n = Number of income increments used to calculate the mean PTC
$PTCF_{h,i,j}$ = Premium Tax Credit Formula percentage
IRF = Income reconciliation factor

$$\textbf{Equation (1b): } PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n}\right] \times IRF \times MTSF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
$ARP_{a,g,c}$ = Adjusted reference premium
$I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL
$j = j^{th}$ percentage-point increment FPL
n = Number of income increments used to calculate the mean PTC
$PTCF_{h,i,j}$ = Premium Tax Credit Formula percentage
IRF = Income reconciliation factor
$MTSF$ = Metal tier selection factor

Equation (2a) and Equation (2b): Adjusted Reference Premium (ARP) Variable (Used in Equations (1a) and (1b))

As part of the calculations for the PTC component, we will continue to calculate the value of the ARP as described below. Consistent with the approach in previous years, we will allow states to choose between using the actual current year premiums or the prior year's premiums multiplied by the premium trend factor (as described in section III.E. of this final notice). Therefore, we describe how we would calculate the ARP under each option.

In the case of a state that elected to use the reference premium (RP) based on the current program year (for example, 2019 premiums for the 2019 program year), we will calculate the value of the ARP as specified in Equation (2a). The ARP will be equal to the RP, which will be based on the second lowest cost silver-level QHP premium in the applicable program year, multiplied by the BHP population health factor (PHF) (described in section III.D. of this final notice), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs through an Exchange would have had on the average QHP premium, and multiplied by the premium adjustment factor (PAF) (described in section III.D. of this final notice), which will account for the change in silver-level QHP premiums due to the discontinuance of CSR payments.

$$\textbf{Equation (2a): } ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor

In the case of a state that elected to use the RP based on the prior program year (for example, 2018 premiums for the 2019 program year, as described in more detail in section III.F. of this final notice), we will calculate the value of the ARP as specified in Equation (2b). The ARP will be equal to the RP, which will be based on the second lowest cost silver-level QHP premium in 2018, multiplied by the BHP PHF (described in section III.D. of this final notice), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium, multiplied by the PAF (described in section III.D. of this final notice), which will account for the change in silver-level QHP premiums due to the discontinuance of CSR payments, and multiplied by the premium trend factor (PTF) (described in section III.E. of this final notice), which will reflect the projected change in the premium level between 2018 and 2019.

$$\textbf{Equation (2b): } ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF \times PTF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor
PTF = Premium trend factor

Equation 3: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell will be multiplied by the number of BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation (3).

$$\textbf{Equation (3): } PMT = \sum \left[(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i}\right]$$

(In this equation, we assign a value of zero to the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) because there is presently no available appropriation from which we can make the CSR portion of any BHP payment. In the event that an appropriation for CSRs for 2019 or 2020 is made, we will determine whether to modify the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) or include the PAF and the MTSF in the BHP payment methodology.

PMT = Total monthly BHP payment
$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
$CSR_{a,g,c,h,i}$ = Cost sharing reduction portion of BHP payment rate
$E_{a,g,c,h,i}$ = Number of BHP enrollees
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)

B. Federal BHP Payment Rate Cells

Consistent with the previous payment methodologies, a state implementing a BHP will provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program quarter, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until actual enrollment data is available. Upon our approval of such estimates as reasonable, we will use those estimates to calculate the prospective payment for the first and subsequent quarters of program operation until the state has provided us actual enrollment data. These data are required to calculate the final BHP payment amount, and to make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. Subsequent quarterly deposits to the state's trust fund will be based on the most recent actual enrollment data submitted to CMS. Actual enrollment data must be based on individuals enrolled for the quarter submitted who the state found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the state in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Procedures will ensure that federal payments to a state reflect actual BHP enrollment during a year, within each applicable category, and prospectively determined federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range, geographic area, coverage status, household size, and income range, as explained above.

We will require the use of certain rate cells as part of the methodology. For each state, we will use rate cells that separate the BHP population into separate cells based on the five factors described as follows:

Factor 1—Age: We will separate enrollees into rate cells by age, using the following age ranges that capture the widest variations in premiums under HHS's Default Age Curve: [14]

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

This provision is unchanged from the current methodology.

Factor 2—Geographic area: For each state, we will separate enrollees into rate cells by geographic areas within which a single RP is charged by QHPs offered through the state's Exchange. Multiple, non-contiguous geographic areas will be incorporated within a single cell, so long as those areas share a common RP.[15] This provision is unchanged from the current methodology.

Factor 3—Coverage status: We will separate enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in family coverage through the BHP, as provided in section 1331(d)(3)(A)(ii) of the Affordable Care Act. Among recipients of family coverage through the BHP, separate rate cells, as explained below, will apply based on whether such coverage involves two adults alone or whether it involves children. This provision is unchanged from the current methodology.

Factor 4—Household size: We will separate enrollees into rate cells by the household size that states use to determine BHP enrollees' household income as a percentage of the FPL under § 600.320 (Administration, eligibility, essential health benefits, performance standards, service delivery requirements, premium and cost sharing, allotments, and reconciliation; Determination of eligibility for and enrollment in a standard health plan). We will require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we will publish instructions for how we will develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We will publish separate rate cells for household sizes of 1 through 10. This provision is unchanged from the current methodology.

Factor 5—Household Income: For households of each applicable size, we will create separate rate cells by income range, as a percentage of FPL. The PTC that a person would receive if enrolled in a QHP through an Exchange varies by household income, both in level and as a ratio to the FPL. Thus, separate rate cells will be used to calculate federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We will use the following income ranges, measured as a ratio to the FPL:

- 0 to 50 percent of FPL.
- 51 to 100 percent of FPL.
- 101 to 138 percent of FPL.[16]
- 139 to 150 percent of FPL.
- 151 to 175 percent of FPL.
- 176 to 200 percent of FPL.

This provision is unchanged from the current methodology.

These rate cells will only be used to calculate the federal BHP payment amount. A state implementing a BHP will not be required to use these rate cells or any of the factors in these rate cells as part of the state payment to the standard health plans participating in the BHP or to help define BHP

[14] This curve is used to implement the Affordable Care Act's 3:1 limit on age-rating in states that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. The default age curve was updated beginning with the 2018 benefit year to include different age rating factors between children 0–14 and for persons at each age between 15 and 20. More information is available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/StateSpecAgeCrv053117.pdf*. Children under age 15 are charged the same premium. For persons age 15–64, the age bands in this final notice divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see Table 5, ''Age-Sex Variables,'' in HHS-Developed Risk Adjustment Model Algorithm Software, June 2, 2014, *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ra-tables-03-27-2014.xlsx*.

[15] For example, a cell within a particular state might refer to ''County Group 1,'' ''County Group 2,'' etc., and a table for the state would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to QHPs, as described in 45 CFR 155.1055, except that service areas smaller than counties are addressed as explained below.

[16] The three lowest income ranges would be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

We will use averages to define federal payment rates, both for income ranges and age ranges, rather than varying such rates to correspond to each individual BHP enrollee's age and income level. We believe that the proposed approach will increase the administrative feasibility of making federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. We believe that this approach should not significantly change federal payment amounts, since within applicable ranges, the BHP-eligible population is distributed relatively evenly.

The number of factors contributing to rate cells, when combined, can result in over 350,000 rate cells which can increase the complexity when generating quarterly payment amounts. In future years, and in the interest of administrative simplification, we will consider whether to combine or eliminate certain rate cells, once we are certain that the effect on payment would be insignificant.

C. Sources and State Data Considerations

To the extent possible, we will continue to use data submitted to the federal government by QHP issuers seeking to offer coverage through an Exchange that uses *HealthCare.gov* in the relevant BHP state to perform the calculations that determine federal BHP payment cell rates.

States operating a SBE in the individual market that do not use *HealthCare.gov,* however, must provide certain data, including premiums for second lowest cost silver-level QHPs, by geographic area, for CMS to calculate the federal BHP payment rates in those states. We proposed that a SBE that does not use *HealthCare.gov* interested in obtaining the applicable federal BHP payment rates for its state must submit such data accurately, completely, and as specified by CMS, by no later than 30 days after the publication of the final notice for CMS to calculate the applicable rates for 2019, and by no later than October 15, 2019, for CMS to calculate the applicable rates for 2020. Given the publication date for this final methodology, we are modifying the timeline for submitting the applicable data such that the data must be submitted by no later than 30 days after the publication of this final notice for both program year 2019 and 2020, which will allow states additional time to submit the required 2019 and 2020 data. If additional state data (that is, in addition to the second lowest cost silver-level QHP premium data) are needed to determine the federal BHP payment rate, such data must be submitted in a timely manner upon request, and in a format specified by us to support the development and timely release of annual BHP payment notices. The specifications for data collection to support the development of BHP payment rates are published in CMS guidance and are available in the Federal Policy Guidance section at *http://medicaid.gov* (*http://www.medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html*).

States must submit enrollment data to us on a quarterly basis and should be technologically prepared to begin submitting data at the start of their BHP, starting with the beginning of the first program year. This timeframe differs from the enrollment estimates used to calculate the initial BHP payment, which states would generally submit to CMS 60 days before the start of the first quarter of the program start date. This requirement is necessary for us to implement the payment methodology that is tied to a quarterly reconciliation based on actual enrollment data.

We will continue the policy adopted in the February 2016 payment notice that in states that have BHP enrollees who do not file federal tax returns (non-filers), the state must develop a methodology, which they must submit to us at the time of their Blueprint submission to determine the enrollees' household income and household size consistently with Marketplace requirements. We reserve the right to approve or disapprove the state's methodology to determine household income and household size for non-filers if the household composition and/or household income resulting from application of the methodology are different from what typically would be expected to result if the individual or head of household in the family were to file a tax return.

In addition, as the federal payments are determined quarterly and the enrollment data is required to be submitted by the states to us quarterly, the quarterly payment will continue to be based on the characteristics of the enrollee at the beginning of the quarter (or their first month of enrollment in the BHP in each quarter). Thus, if an enrollee were to experience a change in county of residence, household income, household size, or other factors related to the BHP payment determination during the quarter, the payment for the quarter will be based on the data as of the beginning of the quarter. Payments will still be made only for months that the person is enrolled in and eligible for the BHP. We do not anticipate that this will have a significant effect on the federal BHP payment. The states must maintain data that are consistent with CMS' verification requirements, including auditable records for each individual enrolled, indicating an eligibility determination and a determination of income and other criteria relevant to the payment methodology as of the beginning of each quarter.

As described in § 600.610 (Secretarial determination of BHP payment amount), the state is required to submit certain data in accordance with this final notice. We require that this data be collected and validated by states operating a BHP, and that this data be submitted to CMS.

D. Discussion of Specific Variables Used in Payment Equations

1. Reference Premium (RP)

To calculate the estimated PTC that would be paid if BHP-eligible individuals enrolled in QHPs through an Exchange, we must calculate a RP because the PTC is based, in part, on the premiums for the applicable second lowest cost silver-level QHP as explained in section III.D.5. of this final notice, regarding the Premium Tax Credit Formula (PTCF). This methodology is unchanged from the current method except to update the reference years, and to provide additional methodological details to simplify calculations and to deal with potential ambiguities. Accordingly, for the purposes of calculating the BHP payment rates, the RP, in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver-level QHP. The applicable second lowest cost silver-level QHP is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver-level QHP of the individual market in the rating area in which the taxpayer resides that is offered through the same Exchange. We will use the adjusted monthly premium for an applicable second lowest cost silver-level QHP in the applicable program year (2019 or 2020) as the RP (except in the case of a state that elects to use the prior plan year's premium as the basis for the federal BHP payment for 2019 or 2020, as described in section III.F. of this final notice).

The RP will be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC

on premiums that are adjusted for age alone, without regard to tobacco use, even for states that allow insurers to vary premiums based on tobacco use in accordance with 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B–3(f)(6), to calculate the PTC for those enrolled in a QHP through an Exchange, we will not update the payment methodology, and subsequently the federal BHP payment rates, in the event that the second lowest cost silver-level QHP used as the RP, or the lowest cost silver-level QHP, changes (that is, terminates or closes enrollment during the year).

We will include the applicable second lowest cost silver-level QHP premium in the BHP payment methodology by age range, geographic area, and self-only or applicable category of family coverage obtained through the BHP.

We note that the choice of the second lowest cost silver-level QHP for calculating BHP payments relies on several simplifying assumptions in its selection. For the purposes of determining the second lowest cost silver-level QHP for calculating PTC for a person enrolled in a QHP through an Exchange, the applicable plan may differ for various reasons. For example, a different second lowest cost silver-level QHP may apply to a family consisting of 2 adults, their child, and their niece than to a family with 2 adults and their children, because 1 or more QHPs in the family's geographic area might not offer family coverage that includes the niece. We believe that it would not be possible to replicate such variations for calculating the BHP payment and believe that in the aggregate, they would not result in a significant difference in the payment. Thus, we will use the second lowest cost silver-level QHP available to any enrollee for a given age, geographic area, and coverage category.

This choice of RP relies on an assumption about enrollment in the Exchanges. In previous methodologies, we had assumed that all persons enrolled in the BHP would have elected to enroll in a silver-level QHP if they had instead enrolled in a QHP through an Exchange (and that the QHP premium would not be lower than the value of the PTC). We will continue to use the second-lowest cost silver-level QHP premium as the RP, but in this methodology, beginning with program year 2020, we will change the assumption about which metal tier plans enrollees would have chosen (see section III.D.6. in this final notice).

We do not believe it is appropriate to adjust the payment for an assumption that some BHP enrollees would not have enrolled in QHPs for purposes of calculating the BHP payment rates, since section 1331(d)(3)(A)(ii) of the Affordable Care Act requires the calculation of such rates as if the enrollee had enrolled in a QHP through an Exchange.

The applicable age bracket will be one dimension of each rate cell. We will assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform distribution of ages within these ranges is a reasonable approach and will produce a reliable determination of the total monthly payment for BHP enrollees. We also believe this approach will avoid potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled.

We will use geographic areas based on the rating areas used in the Exchanges. We will define each geographic area so that the RP is the same throughout the geographic area. When the RP varies within a rating area, we will define geographic areas as aggregations of counties with the same RP. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, no geographic area, for purposes of defining BHP payment rate cells, will be smaller than a county. We do not believe that this assumption will have a significant impact on federal payment levels and it will likely simplify both the calculation of BHP payment rates and the operation of the BHP.

Finally, in terms of the coverage category, the federal payment rates will only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for the BHP. First, in states that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income (MAGI)), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for the BHP. Currently, the only states in this category are Idaho and North Dakota.[17] Second, the BHP would include lawfully present immigrant children with household incomes at or below 200 percent of FPL in states that have not exercised the option under the sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions would be identified based on their Medicaid and CHIP State Plans, and the rate cells would include appropriate categories of BHP family coverage for children. For example, Idaho's Medicaid and CHIP eligibility is limited to families with MAGI at or below 185 percent of FPL. If Idaho implemented a BHP, Idaho children with household incomes between 185 and 200 percent could qualify. In other states, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP, and thus be ineligible for a BHP under section 1331(e)(1)(C) of the Affordable Care Act, which limits a BHP to individuals who are ineligible for minimum essential coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986).

[17] CMCS. ''State Medicaid, CHIP and BHP Income Eligibility Standards Effective April 1, 2019.''

2. Premium Adjustment Factor (PAF)

The PAF considers the premium increases in other states that took effect after we discontinued payments to issuers for CSRs provided to enrollees in QHPs offered through Exchanges. Despite the discontinuance of federal payments for CSRs, QHPs are required to provide CSRs to eligible enrollees. As a result, QHPs frequently increased the silver-level QHP premiums to account for those additional costs; adjustments and how those were applied (for example, to only silver-level QHPs or to all metal-tier plans) varied across states. For the states operating BHPs in 2018, the increases in premiums were relatively minor, because the majority of enrollees eligible for CSRs (and all who were eligible for the largest CSRs) were enrolled in the BHP and not in QHPs on the Exchanges, and therefore issuers in BHP states did not significantly raise premiums to cover unpaid CSR costs.

In the Final Administrative Order, we incorporated the PAF into the BHP payment methodology for 2018 to reflect how other states responded to us ceasing to pay CSRs. We are including this factor in the 2019 and 2020 payment methodologies and will use the same value for the factor as in the Final Administrative Order.

Under the Final Administrative Order, we calculated the PAF for each BHP state by using information requested from QHP issuers in each state and the District of Columbia, and determined the premium adjustment that the responding QHP issuers made to each silver-level QHP in 2018 to account for the discontinuation of CSR payments to QHP issuers. Based on the

data collected, we estimated the median adjustment for silver-level QHPs nationwide (excluding those in the two BHP states). To the extent that QHP issuers made no adjustment (or the adjustment was 0), this would be counted as 0 in determining the median adjustment made to all silver-level QHPs nationwide. If the amount of the adjustment was unknown—or we determined that it should be excluded for methodological reasons (for example, the adjustment was negative, an outlier, or unreasonable)—then we did not count the adjustment toward determining the median adjustment.[18]

For each of the two BHP states, we determined the median premium adjustment for all silver-level QHPs in that state. The PAF for each BHP state equaled 1 plus the nationwide median adjustment divided by 1 plus the state median adjustment for the BHP state. In other words,

PAF = (1 + Nationwide Median Adjustment) ÷ (1 + State Median Adjustment)

To determine the PAF described above, we requested information from QHP issuers in each state serviced by a Federally-facilitated Exchange (FFE) to determine the premium adjustment those issuers made to each silver-level QHP offered through the Exchange in 2018 to account for the end of CSR payments. Specifically, we requested information showing the percentage change that QHP issuers made to the premium for each of their silver-level QHPs to cover benefit expenditures associated with the CSRs, given the lack of CSR payments in 2018. This percentage change was a portion of the overall premium increase from 2017 to 2018.

According to our records, there were 1,233 silver-level QHPs operating on Exchanges in 2018. Of these 1,233 QHPs, 318 QHPs (25.8 percent) responded to our request for the percentage adjustment applied to silver-level QHP premiums in 2018 to account for the discontinuance of the CSRs. These 318 QHPs operated in 26 different states, with 10 of those states running SBEs (while we requested information only from QHP issuers in states serviced by an FFE, many of those issuers also had QHPs in states operating SBEs and submitted information for those states as well). Thirteen of these 318 QHPs were in New York (and none were in Minnesota). Excluding these 13 QHPs from the analysis, the nationwide median adjustment was 20.0 percent. Of the 13 QHPs in New York that responded, the state median adjustment was 1.0 percent. We believe that this is an appropriate adjustment for QHPs in Minnesota as well, based on the observed changes in New York's QHP premiums in response to the CSR adjustment (and the operation of the BHP in that state) and our analysis of expected QHP premium adjustments for states with BHPs. We calculated the PAF as (1 + 20%) ÷ (1 + 1%) (or 1.20/1.01), which results in a value of 1.188.

The PAF will continue to be set to 1.188 for 2019 and 2020. We believe that this value for the PAF continues to reasonably account for the increase in silver-level QHP premiums experienced in non-BHP states that is associated with the discontinuance of the CSR payments. The impact can reasonably be expected to be similar to that in 2018, because the unavailability of CSR payments has not changed.

3. Population Health Factor (PHF)

We will include the PHF in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled through the Exchanges. To the extent that BHP enrollees would have been enrolled through an Exchange in the absence of a BHP in a state, the exclusion of those BHP enrollees in the Exchange may affect the average health status of the overall population and the expected QHP premiums. The use and determination of the PHF as described below is consistent with the current methodology.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Exchange population. At this time, there is a lack of experience available in the Exchanges that limits the ability to analyze the health differences between these groups of enrollees. Exchanges have been in operation since 2014, and two states have operated BHPs since 2015, but we do not have the data available to do the analysis necessary to make this adjustment at this time. In addition, differences in population health may vary across states. Thus, at this time, we believe that it is not feasible to develop a methodology to make a prospective adjustment to the PHF that is reliably accurate, consistent with the methodology described in previous notices. We will consider updating the methodology in future years when information becomes available.

Given these analytic challenges and the limited data about Exchange coverage and the characteristics of BHP-eligible consumers that will be available by the time we establish federal payment rates, we believe that the most appropriate adjustment for 2019 and 2020 is 1.00.

In the previous BHP payment methodologies, we included an option for states to include a retrospective population health status adjustment. The states will be provided with the same option for 2019 and 2020 to include a retrospective population health status adjustment in the certified methodology, which is subject to our review and approval. This option is described further in section III.F. of this final notice. Regardless of whether a state elects to include a retrospective population health status adjustment, we anticipate that, in future years, when additional data becomes available about Exchange coverage and the characteristics of BHP enrollees, we may estimate the PHF differently.

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC that would have been provided to BHP-eligible individuals had they enrolled in QHPs, BHP standard health plans do not participate in the risk adjustment program operated by HHS on behalf of states. Further, standard health plans did not qualify for payments from the transitional reinsurance program established under section 1341 of the Affordable Care Act.[19] To the extent that a state operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the state's individual market, the state would need to employ methods other than the HHS-operated risk adjustment program to achieve this goal.

4. Household Income (I)

Household income is a significant determinant of the amount of the PTC provided for persons enrolled in a QHP through an Exchange. Accordingly, the BHP payment methodology incorporates household income into the calculations of the payment rates through the use of income-based rate cells. We define

[18] Some examples of outliers or unreasonable adjustments include (but are not limited to) values over 100 percent (implying the premiums doubled or more as a result of the adjustment), values more than double the otherwise highest adjustment, or non-numerical entries.

[19] See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 153.20 (definition of ''Reinsurance-eligible plan'' as not including ''health insurance coverage not required to submit reinsurance contributions''), 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for ''Reinsurance-eligible plans'').

household income in accordance with the definition of modified adjusted gross income in 26 U.S.C. 36B(d)(2)(B) and consistent with the definition in 45 CFR 155.300. Income would be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2). In this methodology, household size and income as a percentage of FPL would be used as factors in developing the rate cells. We will use the following income ranges measured as a percentage of FPL: [20]

- 0–50 percent.
- 51–100 percent.
- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We will assume a uniform income distribution for each federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges proposed will be reasonably accurate for the purposes of calculating the BHP payment and will avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of persons who are eligible for or enrolled in the BHP within rate cells that may be relatively small.

Thus, when calculating the mean, or average, PTC for a rate cell, we will calculate the value of the PTC at each 1 percentage point interval of the income range for each federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation will rely on the PTC formula described in section III.D.5. of this final notice.

As the advance payment of PTC (APTC) for persons enrolled in QHPs would be calculated based on their household income during the open enrollment period, and that income would be measured against the FPL at that time, we will adjust the FPL by multiplying the FPL by a projected increase in the CPI–U between the time that the BHP payment rates are calculated and the QHP open enrollment period, if the FPL is expected to be updated during that time. The projected increase in the CPI–U would be based on the intermediate inflation forecasts from the most recent OASDI and Medicare Trustees Reports.[21]

5. Premium Tax Credit Formula (PTCF)

In Equations (1a) and (1b) described in section III.A.1. of this final notice, we will use the formula described in 26 U.S.C. 36B(b) to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology. This formula is used to determine the contribution amount (the amount of premium that an individual or household theoretically would be required to pay for coverage in a QHP on an Exchange), which is based on (A) the household income; (B) the household income as a percentage of FPL for the family size; and (C) the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below.

The difference between the contribution amount and the adjusted monthly premium (that is, the monthly premium adjusted for the age of the enrollee) for the applicable second lowest cost silver-level QHP is the estimated amount of the PTC that would be provided for the enrollee.

The PTC amount provided for a person enrolled in a QHP through an Exchange is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the adjusted monthly premium for the plan in which the person or household enrolls, or the adjusted monthly premium for the applicable second lowest cost silver-level QHP minus the contribution amount.

The applicable percentage is the percentage of income that a household would pay if the household enrolled in the applicable second-lowest cost silver-level plan on the Exchange, and is used to calculate the household's PTC. The applicable percentage is defined in 26 U.S.C. 36B(b)(3)(A) and 26 CFR 1.36B–3(g) as the percentage that applies to a taxpayer's household income that is within an income tier specified in Tables 1 and 2, increasing on a sliding scale in a linear manner from an initial premium percentage to a final premium percentage specified in Tables 1 and 2. The applicable percentages of income in Table 1 for calendar year (CY) 2018 will be effective for BHP program year 2019, and the applicable percentages of income in Table 2 for CY 2019 will be effective for BHP program year 2020. The applicable percentages of income will be updated in future years in accordance with 26 U.S.C. 36B(b)(3)(A)(ii).

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2018 [a]

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.01	2.01
133% but less than 150%	3.02	4.03
150% but less than 200%	4.03	6.34
200% but less than 250%	6.34	8.10
250% but less than 300%	8.10	9.56
300% but not more than 400%	9.56	9.56

[a] IRS Revenue Procedure 2017–36. *https://www.irs.gov/pub/irs-drop/rp-17-36.pdf.*

TABLE 2—APPLICABLE PERCENTAGE TABLE FOR CY 2019 [b]

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.08	2.08
133% but less than 150%	3.11	4.15

[20] These income ranges and this analysis of income apply to the calculation of the PTC.

[21] See Table IV A1 from the 2018 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal supplementary Medical Insurance Trust Funds, available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2019.pdf.https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2018.pdf.*

TABLE 2—APPLICABLE PERCENTAGE TABLE FOR CY 2019 [b]—Continued

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
150% but less than 200%	4.15	6.54
200% but less than 250%	6.54	8.36
250% but less than 300%	8.36	9.86
300% but not more than 400%	9.86	9.86

[b] IRS Revenue Procedure 2018–34. *https://www.irs.gov/pub/irs-drop/rp-18-34.pdf.*

6. Metal-Tier Selection Factor (MTSF)

As we discuss in section II.B. of this final notice, we are finalizing an adjustment in the methodology for program year 2020 to account for the impact of individuals selecting different metal-tier level plans in the Exchange, which we refer to as the Metal Tier Selection Factor (MTSF). Here, we explain how the MTSF is calculated.

We have calculated the MTSF for program year 2020 using the following approach. First, we calculate the percentage of enrollees with incomes below 200 percent of FPL (those who would be potentially eligible for the BHP) in non-BHP states who enrolled in bronze-level QHPs in 2018. Second, we calculate the ratio of the average PTC paid for enrollees in this income range who selected bronze-level QHPs compared to the average PTC paid for enrollees in the same income range who selected silver-level QHPs. Both of these calculations are done using CMS data on Exchange enrollment and payments.

The MTSF equals the value of 1 minus the product of the percentage of enrollees who chose bronze-level QHPs and 1 minus the ratio of the average PTC paid for enrollees in bronze-level QHPs to the average PTC paid for enrollees in silver-level QHPs:

MTSF = 1 − (percentage of enrollees in bronze-level QHPs × (1 − average PTC paid for bronze-level QHP enrollees/average PTC paid for silver-level QHP enrollees))

We have calculated that 12.68 percent of enrollees in households with incomes below 200 percent of FPL selected bronze-level QHPs in 2018. We also have calculated that the ratio of the average PTC paid for those enrollees in bronze-level QHPs to the average PTCs paid for enrollees in silver-level QHPs was 76.66 percent after adjusting for the average age of bronze-level and silver-level QHP enrollees. The MTSF is equal to 1 minus the product of the percentage of enrollees in bronze-level QHPs (12.68 percent) and 1 minus the ratio of the average PTC paid for bronze-level QHP enrollees to the average PTC paid for silver-level QHP enrollees (76.66 percent). Thus, the MTSF would be calculated as:

$$MTSF = 1 - (12.68\% \times (1 - 76.66\%))$$

Therefore, we have set the value of the MTSF for 2020 to be 97.04 percent.

In addition, we proposed in the April 2019 proposed payment notice to update the value of the MTSF for 2020 with 2019 data. However, as we discuss in section II.B. of this final notice, as since the 2019 data on enrollment and PTCs necessary to update the factor are not available at this time, we apply the MTSF at the value of 97.04 percent for program year 2020.

7. Income Reconciliation Factor (IRF)

For persons enrolled in a QHP through an Exchange who receive APTC, there will be an annual reconciliation following the end of the year to compare the advance payments to the correct amount of PTC based on household circumstances shown on the federal income tax return. Any difference between the latter amounts and the advance payments made during the year would either be paid to the taxpayer (if too little APTC was paid) or charged to the taxpayer as additional tax (if too much APTC was made, subject to any limitations in statute or regulation), as provided in 26 U.S.C. 36B(f).

Section 1331(e)(2) of the Affordable Care Act specifies that an individual eligible for the BHP may not be treated as a qualified individual under section 1312 who is eligible for enrollment in a QHP offered through an Exchange. We are defining ''eligible'' to mean anyone for whom the state agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because enrollment in a QHP is a requirement for individuals to receive PTC, individuals determined or assessed as eligible for a BHP are not eligible to receive APTC assistance for coverage in the Exchange. Because they do not receive APTC assistance, BHP enrollees, on whom the BHP payment methodology is based, are not subject to the same income reconciliation as Exchange consumers. Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and the actual household income over the year. These differences may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual household incomes of BHP enrollees during the year. Even if the BHP adjusts household income determinations and corresponding claims of federal payment amounts based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through an Exchange and received APTC assistance.

Therefore, in accordance with current practice, we are including in Equations (1a) and (1b) an income adjustment factor that would account for the difference between calculating estimated PTC using: (a) Household income relative to FPL as determined at initial application and potentially revised mid-year under § 600.320, for purposes of determining BHP eligibility and claiming federal BHP payments; and (b) actual household income relative to FPL received during the plan year, as it would be reflected on individual federal income tax returns. This adjustment will seek prospectively to capture the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to tax reconciliation after receiving APTC assistance for coverage provided through QHPs. Consistent with the methodology used in past years, we will estimate reconciliation effects based on tax data for 2 years, reflecting income and tax unit

composition changes over time among BHP-eligible individuals.

The OTA maintains a model that combines detailed tax and other data, including Exchange enrollment and PTC claimed, to project Exchange premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in the BHP. We will use the ratio of the reconciled PTC to the initial estimation of PTC as the IRF in Equations (1a) and (1b) for estimating the PTC portion of the BHP payment rate.

For 2019 and 2020, OTA estimated that the IRF for states that have implemented the Medicaid eligibility expansion to cover adults up to 133 percent of FPL will be 98.37 percent and 98.91 percent, respectively; for states that have not implemented the Medicaid eligibility expansion and do not have to cover adults up to 133 percent of FPL, OTA estimated that the IRF would be 97.70 percent and 98.09 percent, respectively. In the 2019 and 2020 payment methodology, the IRF will be 98.03 percent in 2019 and 98.50 percent in 2020, which is the average of the values for expansion and non-expansion states in each year.

E. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In the interest of allowing states greater certainty in the total BHP federal payments for a given plan year, we have given states the option to have their final federal BHP payment rates calculated using a projected ARP (that is, using premium data from the prior program year multiplied by the PTF defined below), as described in Equation (2b). Under the 2016 BHP payment notice, states were required to make their election for the 2017 program year by May 15, 2016 and to make their election for the 2018 program year by May 15, 2017. States will generally continue to meet the deadline of making their election by May 15 of the year preceding the applicable program year. However, because we are finalizing the 2019 and 2020 payment methodologies after the May 15, 2018 and May 15, 2019 deadlines, respectively, have passed, we are finalizing that a state may change its election for the 2019 and 2020 program years, provided that it does so within 30 days of the date of this final notice. A change in the state's election would be effective retroactive to January 1, 2019 for the 2019 program year. The 2020 election will be effective January 1, 2020.

For Equation (2b), we will continue to define the Premium Trend Factor (PTF), with minor changes in calculation sources and methods, as follows:

PTF: In Equation (2b), we will calculate an ARP based on the application of certain relevant variables to the RP, including a PTF. In the case of a state that would elect to use the 2018 premiums as the basis for determining the 2019 BHP payment, for example, it would be appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP program year. We define this as the premium trend factor (PTF) in the BHP payment methodology. This factor will approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This will provide an estimate of the adjusted monthly premium for the applicable second lowest cost silver-level QHP that would be more accurate and reflective of health care costs in the BHP program year.

For the PTF, we proposed to use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure (NHE) projections, developed by the Office of the Actuary in CMS (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html*). We are finalizing the PTF as proposed. For BHP program year 2019, the PTF is 3.9 percent, and for program year 2020, the PTF is 4.9 percent.

States may want to consider that the increase in premiums for QHPs from one year to the next may differ from the PTF developed for the BHP funding methodology for several reasons. In particular, states may want to consider that the second lowest cost silver-level QHP may be different from one year to the next. This may lead to the PTF being greater than or less than the actual change in the premium of the second lowest cost silver-level QHP.

F. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

To determine whether the potential difference in health status between BHP enrollees and consumers in the Exchange would affect the PTC and risk adjustment payments that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange, we will continue to provide states implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the federal BHP payments to reflect the actual value that would be assigned to the population health factor (or risk adjustment) based on data accumulated during that program year for each rate cell.

We acknowledge that there is uncertainty with respect to this factor due to the lack of experience of QHPs through an Exchange and other payments related to the Exchange, which is why, absent a state election, we proposed to use a value for the population health factor to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, the potential effect such risk would have had on PTC, and risk adjustment that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange. However, to the extent that a state would develop an approved protocol to collect data and effectively measure the relative risk and the effect on federal payments, we will permit a retrospective adjustment that would measure the actual difference in risk between the two populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a state electing the option to implement a retrospective population health status adjustment, we proposed requiring the state to submit a proposed protocol to CMS, which would be subject to approval by us and would be required to be certified by the Chief Actuary of CMS, in consultation with the OTA, as part of the BHP payment methodology. We describe the protocol for the population health status adjustment in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (*http://*

www.medicaid.gov/Basic-Health-Program/Downloads/Risk-Adjustment-and-BHP-White-Paper.pdf). Under the February 2016 BHP payment notice, states were required to submit a proposed protocol by August 1, 2017 for the 2018 program year. We proposed to require a state to submit its proposed protocol within 60 days of the publication of the final payment methodology for our approval for the 2019 program year, and by August 1, 2019 for the 2020 program year. Given the publication date of this final notice, we will require a state to submit its proposed protocol within 60 days of the publication of the final payment methodology for our approval for both the 2019 and 2020 program years, which will allow a state adequate time to submit the proposal for program year 2020. This submission would also include descriptions of how the state would collect the necessary data to determine the adjustment, including any contracting contingences that may be in place with participating standard health plan issuers. We will provide technical assistance to states as they develop their protocols. To implement the population health status adjustment, we must approve the state's protocol no later than 90 days after the submission of the population health factor methodology for the 2019 program year, and by December 31, 2019 for the 2020 program year. Finally, the state will be required to complete the population health status adjustment at the end of the program year based on the approved protocol. After the end of the program year, and once data is made available, we will review the state's findings, consistent with the approved protocol, and make any necessary adjustments to the state's federal BHP payment amounts. If we determine that the federal BHP payments were less than they would have been using the final adjustment factor, we will apply the difference to the state's next quarterly BHP trust fund deposit. If we determine that the federal BHP payments were more than they would have been using the final reconciled factor, we will subtract the difference from the next quarterly BHP payment to the state.

IV. Collection of Information Requirements

The final methodologies for program years 2019 and 2020 are similar to the methodology originally published in the February 2016 payment notice and modified by the Final Administrative Order (see section I.B. of this final notice for more information). The methodologies for 2019 and 2020 will not revise or impose any additional reporting, recordkeeping, or third-party disclosure requirements or burden on QHPs or on states operating SBEs. Although the methodologies' information collection requirements and burden estimates had at one time been approved by OMB under control number 0938–1218 (CMS–10510), the approval was discontinued on August 31, 2017, since we adjusted our estimated number of respondents below the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) threshold of ten or more respondents. Only New York and Minnesota operate a BHP at this time.

V. Regulatory Impact Analysis

A. Statement of Need

Section 1331 of the Affordable Care Act (42 U.S.C. 18051) requires the Secretary to establish a BHP, and section 1331(d)(1) of the Affordable Care Act specifically provides that if the Secretary finds that a state meets the requirements of the program established under section 1331(a) of the Affordable Care Act, the Secretary shall transfer to the State federal BHP payments described in section (d)(3). This final notice provides for the funding methodologies that we will use to determine the federal BHP payment amounts required to implement these statutory provisions for program years 2019 and 2020.

B. Overall Impact

We have examined the impacts of this final notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting 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) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Agencies must prepare a regulatory impact analysis (RIA) for major rules with economically significant effects ($100 million or more in any 1 year). As noted in the BHP final rule, the BHP provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage on an Exchange. To date, two states have established a BHP, and we expect state participation to remain static as a result of these payment methodologies. However, the final payment methodology for program year 2020 differs from prior years' methodologies due to the addition of the MTSF, which would reduce BHP payments, compared to the previous year's methodology. We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

The aggregate economic impact of this payment methodology is estimated to be $0 for CY 2019 and $151 million for CY 2020 (measured in real 2019 dollars), which would be a reduction in federal payments to the state BHPs. There is zero incremental cost in 2019 attributable to policy changes because the methodology is not changing from 2018. For the purposes of this analysis, we have assumed that two states would implement BHPs in 2020. This assumption is based on the fact that two states have established a BHP to date, and we do not have any indication that additional states may implement the program. We also assumed there would be approximately 806,000 BHP enrollees in 2020. The size of the BHP depends on several factors, including the number

of and which particular states choose to implement or continue a BHP, the level of QHP premiums, and the other coverage options for persons who would be eligible for the BHP. In particular, while we generally expect that many enrollees would have otherwise been enrolled in a QHP on the Exchange, some persons may have been eligible for Medicaid under a waiver or a state health coverage program. For those who would have enrolled in a QHP and thus would have received PTCs, the federal expenditures for the BHP would be expected to be more than offset by a reduction in federal expenditures for PTCs. For those who would have been enrolled in Medicaid, there would likely be a smaller offset in federal expenditures (to account for the federal share of Medicaid expenditures), and for those who would have been covered in non-federal programs or would have been uninsured, there likely would be an increase in federal expenditures.

Projected BHP enrollment and expenditures under the previous payment methodology were calculated using the most recent 2018 QHP premiums and state estimates for BHP enrollment. We projected enrollment for 2020 using the projected increase in the number of adults in the U.S. from 2018 to 2020 (about 0.5 percent per year), and we projected premiums using the NHE projection of premiums for private health insurance. Expenditures are in real 2019 dollars and are deflated using the projected change in the medical component of the consumer price index (CPI–M). Expenditures are projected to be $5.094 billion in 2020.

For the change in the methodology to incorporate the MTSF for benefit year 2020, the MTSF was calculated as having a value of 97.04 percent (as described previously). This reduced projected expenditures by approximately $151 million in 2020, compared to projected expenditures using the methodology in the 2018 Final Administrative Order.

TABLE 3—ESTIMATED FEDERAL IMPACTS FOR THE BASIC HEALTH PROGRAM 2020 PAYMENT METHODOLOGY

[Millions of 2020 dollars]

	2019	2020
Projected Federal BHP payments under 2018 Final Administrative Order	$5,040	$5,094
Projected Federal BHP payments under finalized methodologies	5,040	4,944
Federal savings under methodology	0	151

Totals may not add due to rounding.

C. Anticipated Effects

Currently, states pay a portion of the BHP costs each year. We expect the proposed change in the BHP methodology for benefit year 2020 to shift a portion of BHP costs from the federal government to the states operating a BHP. This increase in costs may lead the states to consider a combination of the following changes: Increasing state payments to the BHP; increasing beneficiary premiums and cost-sharing to the BHP; and reducing payment rates to standard health plans. Beneficiary premiums and cost-sharing are limited under the BHP, so it is unlikely states could make up much of the difference through increased beneficiary contributions. We expect that most of the difference in federal payments would be made up through increases in state funding.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity.

Because these methodologies are focused solely on federal BHP payment rates to states, it does not contain provisions that would have a direct impact on hospitals, physicians, and other health care providers that are designated as small entities under the RFA. Accordingly, we have determined that these methodologies, like the current methodology and the final rule that established the BHP, will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the RFA requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the RFA, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, the Secretary has determined that these methodologies will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. States have the option, but are not required, to establish a BHP. Further, the methodologies would establish federal payment rates without requiring states to provide the Secretary with any data not already required by other provisions of the Affordable Care Act or its implementing regulations. Thus, neither the current nor the finalized payment methodologies mandate expenditures by state governments, local governments, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state.

D. Alternative Approaches

Given the absence of an appropriation for federal CSR payments, we considered several alternatives of how to consider these amounts in the BHP payment methodology for 2019 and 2020, following the Final Administrative Order. In most states without BHPs, there were increases in the silver-level QHP premiums due to the lack of federal funding for CSRs in 2018, and those increases are expected

to also be reflected in the 2019 and 2020 premiums (absent federal funding for CSRs). QHP issuers are still responsible for CSRs on behalf of eligible enrollees, regardless of federal funding; therefore, in many states QHP issuers have increased premiums significantly to account for the costs of the CSRs in 2018 and are expected to continue to do so in subsequent years. In states operating BHPs, the majority of the individuals eligible for CSRs (and the vast majority eligible for the largest CSRs) are enrolled in the BHP and not in the Exchange. As a result, in those states, QHP issuers made much smaller adjustments to premiums to account for CSR costs in 2018. As part of the Final Administrative Order, we considered whether or not to make an adjustment in the BHP payment methodology for how much QHP premiums would have increased if BHP enrollees had been enrolled through the Exchange instead. We also considered other methodologies for calculating the PAF, including using program data to estimate the expected adjustment and to request information from QHPs and/or states for 2019 and 2020 QHP premiums. We decided to use the same methodology, data, and adjustment to the premiums as was used in the 2018 payment methodology described in the Final Administrative Order (see section III.D.2. of this final notice for more information).

We also considered whether or not to make an adjustment to account for the number of enrollees who would select other metal tier plans on the Exchange (if not for the existence of the BHP) and the impact that this would have on the average PTC paid. In previous methodologies, we have not made such an adjustment; however, there are two results from the discontinuance of CSR payments that we considered in adding this adjustment for the 2019 and 2020 payment methodologies. First, there are a significant percentage of enrollees with incomes below 200 percent of FPL in states without BHPs that have chosen to enroll in bronze-level QHPs, despite the availability of CSRs if they had chosen to enroll in a silver-level QHP (about 13 percent in 2018). Second, the discontinuance of the CSR payments and the subsequent increases to silver-level QHP premiums in 2018 led to a larger difference between the bronze-level and silver-level QHP premiums in many states (from a difference of about 17 percent in 2017 to about 33 percent in 2018). As a result, the likelihood that enrollees eligible for CSRs who enrolled in bronze-level QHPs would pay $0 in premium increased (and thus the government would not pay the full value of the PTCs enrollees were eligible for), and the average difference between the bronze-level QHP premium and the full value of the PTC likely increased. In addition, the percentage of enrollees eligible for CSRs enrolled in bronze-level QHPs also increased from 2017 to 2018 (from 11 percent to 13 percent), and we believe this is likely due to the availability of QHPs that effectively had $0 in premium due to the PTC for which individuals qualified. Therefore, we are making an adjustment for enrollees selecting bronze-level QHPs in the methodology for the 2020 program year. As noted previously, we are not including the MTSF in the 2019 payment methodology.

In addition, we considered whether or not to continue to provide states the option to develop a protocol for a retrospective adjustment to the population health factor as we did in previous payment methodologies. We believe that continuing to provide this option is appropriate and likely to improve the accuracy of the final payments.

We also considered whether or not to require the use of the program year premiums to develop the federal BHP payment rates, rather than allow the choice between the program year premiums and the prior year premiums trended forward. We believe that the payment rates can still be developed accurately using either the prior year QHP premiums or the current program year premiums and that it is appropriate to continue to provide the states the option.

Many of the factors in this final notice are specified in statute; therefore, we are limited in the alternative approaches we could consider. One area in which we previously had and still have a choice is in selecting the data sources used to determine the factors included in the methodology. Except for state-specific RPs and enrollment data, we have used national rather than state-specific data. This decision is due to the lack of currently available state-specific data needed to develop the majority of the factors included in the methodology. We believe the national data produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach is less burdensome on states. In many cases, using state-specific data would necessitate additional requirements on the states to collect, validate, and report data to CMS. By using national data, we are able to collect data from other sources and limit the burden placed on the states. For RPs and enrollment data, we have used state-specific data rather than national data as we believe state-specific data will produce more accurate determinations than national averages.

E. Accounting Statement and Table

In accordance with OMB Circular A–4, Table 4 depicts an accounting statement summarizing the assessment of the benefits, costs, and transfers associated with these payment methodologies.

TABLE 4—ACCOUNTING STATEMENT CHANGES TO FEDERAL PAYMENTS FOR THE BASIC HEALTH PROGRAM FOR 2019 AND 2020

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Transfers: Annualized/Monetized ($million/year)	$73	2019	7	2019–2020
	74	2019	3	2019–2020
From Whom to Whom	From the States Operating BHPs to the Federal Government.			

F. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this final notice is a transfer notice that does not impose more than de minimis costs, and thus is not a regulatory action for the purposes of E.O. 13771.

G. Conclusion

Overall, federal BHP payments are expected to decrease by $151 million from 2019 through 2020 as a result of the changes to the methodologies. The decrease in federal BHP payments is expected to be made up in increased state BHP expenditures, with a potential increase in beneficiary contributions and potential decreases in provider payment rates (including rates to standard health plans in the BHP) as a result of these changes. The analysis above, together with the remainder of this preamble, provides an RIA.

In accordance with the provisions of Executive Order 12866, this document was reviewed by the Office of Management and Budget.

Dated: October 28, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 28, 2019.

Alex M. Azar,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–24064 Filed 11–1–19; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2019–0003; Internal Agency Docket No. FEMA–8605]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community no.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VIII				
Montana:				
Rosebud County, Unincorporated Areas	300069	April 9, 1997, Emerg; September 1, 1997, Reg; November 15, 2019, Susp	November 15, 2019.	November 15, 2019.
Roundup, City of, Musselshell County ..	300050	March 12, 1975, Emerg; March 18, 1986, Reg; November 15, 2019, Susp	.....do	Do.

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 29, 2019.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–24077 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 102

RIN 0991–AC0

Annual Civil Monetary Penalties Inflation Adjustment

AGENCY: Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and is making a technical change to correct an error in the regulation.

DATES: This rule is effective November 5, 2019.

FOR FURTHER INFORMATION CONTACT: David Dasher, Deputy Assistant Secretary, Office of Acquisitions, Office of the Assistant Secretary for Financial Resources, Room 536–H, Hubert Humphrey Building, 200 Independence Avenue SW, Washington DC 20201; 202–205–0706.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the ''2015 Act'') amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890 (1990)), which is intended to improve the effectiveness of civil monetary penalties (CMPs) and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

The Department of Health and Human Services (HHS) lists the civil monetary penalty authorities and the penalty amounts administered by all of its agencies in tabular form in 45 CFR 102.3, which was issued in an interim final rule published in the September 6, 2016 **Federal Register** (81 FR 61538). Annual adjustments were subsequently published on February 3, 2017 (82 FR 9175) and on October 11, 2018 (83 FR 51369).

II. Calculation of Adjustment

The annual inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each civil penalty was most recently established or modified. In the December 14, 2018, Office of Management and Budget (OMB) Memorandum for the Heads of Executive Agencies and Departments, M–19–04, *Implementation of the Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,* OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2019, based on the CPI–U for the month of October 2018, not seasonally adjusted, is 1.02522. The multiplier is applied to each applicable penalty amount that was updated and published for FY 2018 and is rounded to the nearest dollar.

Using the 2019 multiplier, HHS adjusted all its applicable monetary penalties in 45 CFR 102.3. In addition to the adjustment, a technical error for an incorrect citation in the description of 21 U.S.C. 333(f)(3)(A) was identified and is corrected below.

III. Statutory and Executive Order Reviews

The 2015 Act requires federal agencies to publish annual penalty inflation adjustments notwithstanding section 553 of the Administrative Procedure Act (APA).

Section 4(a) of the 2015 Act directs federal agencies to publish annual adjustments no later than January 15th of each year thereafter. In accordance with section 553 of the APA, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to OMB's Memorandum M–19–04, the phrase ''notwithstanding section 553'' in section 4(b)(2) of the 2015 Act means that ''the public procedure the APA

generally requires (*i.e.,* notice, an opportunity for comment, and a delay in effective date) is not required for agencies to issue regulations implementing the annual adjustment.''

Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

Pursuant to OMB Memorandum M–19–04, HHS has determined that the annual inflation adjustment to the civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

IV. Effective Date

This rule is effective November 5, 2019. The adjusted civil monetary penalty amounts apply to penalties assessed on or after November 5, 2019, if the violation occurred on or after November 2, 2015. If the violation occurred prior to November 2, 2015, or a penalty was assessed prior to September 6, 2016, the pre-adjustment civil penalty amounts in effect prior to September 6, 2016, will apply.

List of Subjects in 45 CFR Part 102

Administrative practice and procedure, Penalties.

For reasons discussed in the preamble, the Department of Health and Human Services amends 45 CFR part 102 as follows:

PART 102—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Public Law 101–410, Sec. 701 of Public Law 114–74, 31 U.S.C. 3801–3812.

■ 2. Amend § 102.3 by revising the table to read as follows:

§ 102.3 Penalty adjustment and table.

* * * * *

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS

[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
21 U.S.C.:						
333(b)(2)(A)		FDA	Penalty for violations related to drug samples resulting in a conviction of any representative of manufacturer or distributor in any 10-year period.	2018	102,606	105,194
333(b)(2)(B)		FDA	Penalty for violation related to drug samples resulting in a conviction of any representative of manufacturer or distributor after the second conviction in any 10-yr period.	2018	2,052,107	2,103,861
333(b)(3)		FDA	Penalty for failure to make a report required by 21 U.S.C. 353(d)(3)(E) relating to drug samples.	2018	205,211	210,386
333(f)(1)(A)		FDA	Penalty for any person who violates a requirement related to devices for each such violation.	2018	27,714	28,413
			Penalty for aggregate of all violations related to devices in a single proceeding.	2018	1,847,663	1,894,261
333(f)(2)(A)		FDA	Penalty for any individual who introduces or delivers for introduction into interstate commerce food that is adulterated per 21 U.S.C. 342(a)(2)(B) or any individual who does not comply with a recall order under 21 U.S.C. 350l.	2018	77,910	79,875
			Penalty in the case of any other person other than an individual) for such introduction or delivery of adulterated food.	2018	389,550	399,374
			Penalty for aggregate of all such violations related to adulterated food adjudicated in a single proceeding.	2018	779,098	798,747
333(f)(3)(A)		FDA	Penalty for all violations adjudicated in a single proceeding for any person who violates 21 U.S.C. 331(jj) by failing to submit the certification required by 42 U.S.C. 282(j)(5)(B) or knowingly submitting a false certification; by failing to submit clinical trial information under 42 U.S.C. 282(j); or by submitting clinical trial information under 42 U.S.C. 282(j) that is false or misleading in any particular under 42 U.S.C. 282(j)(5)(D).	2018	11,805	12,103
333(f)(3)(B)		FDA	Penalty for each day any above violation is not corrected after a 30-day period following notification until the violation is corrected.	2018	11,805	12,103
333(f)(4)(A)(i)		FDA	Penalty for any responsible person that violates a requirement of 21 U.S.C. 355(o) (post-marketing studies, clinical trials, labeling), 21 U.S.C. 355(p) (risk evaluation and mitigation (REMS)), or 21 U.S.C. 355–1 (REMS).	2018	295,142	302,585

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
			Penalty for aggregate of all such above violations in a single proceeding.	2018	1,180,566	1,210,340
333(f)(4)(A)(ii)		FDA	Penalty for REMS violation that continues after written notice to the responsible person for the first 30-day period (or any portion thereof) the responsible person continues to be in violation.	2018	295,142	302,585
			Penalty for REMS violation that continues after written notice to responsible person doubles for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period.	2018	1,180,566	1,210,340
			Penalty for aggregate of all such above violations adjudicated in a single proceeding.	2018	11,805,665	12,103,404
333(f)(9)(A)		FDA	Penalty for any person who violates a requirement which relates to tobacco products for each such violation.	2018	17,115	17,547
			Penalty for aggregate of all such violations of tobacco product requirement adjudicated in a single proceeding.	2018	1,141,021	1,169,798
333(f)(9)(B)(i)(I)		FDA	Penalty per violation related to violations of tobacco requirements.	2018	285,256	292,450
			Penalty for aggregate of all such violations of tobacco product requirements adjudicated in a single proceeding.	2018	1,141,021	1,169,798
333(f)(9)(B)(i)(II)		FDA	Penalty in the case of a violation of tobacco product requirements that continues after written notice to such person, for the first 30-day period (or any portion thereof) the person continues to be in violation.	2018	285,256	292,450
			Penalty for violation of tobacco product requirements that continues after written notice to such person shall double for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period.	2018	1,141,021	1,169,798
			Penalty for aggregate of all such violations related to tobacco product requirements adjudicated in a single proceeding.	2018	11,410,217	11,697,983
333(f)(9)(B)(ii)(I)		FDA	Penalty for any person who either does not conduct post-market surveillance and studies to determine impact of a modified risk tobacco product for which the HHS Secretary has provided them an order to sell, or who does not submit a protocol to the HHS Secretary after being notified of a requirement to conduct post-market surveillance of such tobacco products.	2018	285,256	292,450
			Penalty for aggregate of for all such above violations adjudicated in a single proceeding.	2018	1,141,021	1,169,798
333(f)(9)(B)(ii)(II)		FDA	Penalty for violation of modified risk tobacco product post-market surveillance that continues after written notice to such person for the first 30-day period (or any portion thereof) that the person continues to be in violation.	2018	285,256	292,450
			Penalty for post-notice violation of modified risk tobacco product post-market surveillance shall double for every 30-day period thereafter that the tobacco product requirement violation continues for any 30-day period, but may not exceed penalty amount for any 30-day period.	2018	1,141,021	1,169,798
			Penalty for aggregate above tobacco product requirement violations adjudicated in a single proceeding.	2018	11,410,217	11,697,983
333(g)(1)		FDA	Penalty for any person who disseminates or causes another party to disseminate a direct-to-consumer advertisement that is false or misleading for the first such violation in any 3-year period.	2018	295,142	302,585

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
			Penalty for each subsequent above violation in any 3-year period.	2018	590,284	605,171
333 note		FDA	Penalty to be applied for violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (*e.g.,* violations of regulations in 21 CFR part 1140) with respect to a retailer with an approved training program in the case of a second regulation violation within a 12-month period.	2018	284.69439	292
			Penalty in the case of a third tobacco product regulation violation within a 24-month period.	2018	570.40919	584
			Penalty in the case of a fourth tobacco product regulation violation within a 24-month period.	2018	2,282	2,340
			Penalty in the case of a fifth tobacco product regulation violation within a 36-month period.	2018	5,705	5,849
			Penalty in the case of a sixth or subsequent tobacco product regulation violation within a 48-month period as determined on a case-by-case basis.	2018	11,410	11,698
			Penalty to be applied for violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (*e.g.,* violations of regulations in 21 CFR part 1140) with respect to a retailer that does not have an approved training program in the case of the first regulation violation.	2018	284.69439	292
			Penalty in the case of a second tobacco product regulation violation within a 12-month period.	2018	570.40919	584
			Penalty in the case of a third tobacco product regulation violation within a 24-month period.	2018	1,141	1,170
			Penalty in the case of a fourth tobacco product regulation violation within a 24-month period.	2018	2,282	2,340
			Penalty in the case of a fifth tobacco product regulation violation within a 36-month period.	2018	5,705	5,849
			Penalty in the case of a fifth tobacco product regulation violation within a 36-month period.	2018	5,705	5,849
			Penalty in the case of a sixth or subsequent tobacco product regulation violation within a 48-month period as determined on a case-by-case basis.	2018	11,410	11,698
335b(a)		FDA	Penalty for each violation for any individual who made a false statement or misrepresentation of a material fact, bribed, destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document, failed to disclose a material fact, obstructed an investigation, employed a consultant who was debarred, debarred individual provided consultant services.	2018	434,878	445,846
			Penalty in the case of any other person (other than an individual) per above violation..	2018	1,739,513	1,783,384
360pp(b)(1)		FDA	Penalty for any person who violates any such requirements for electronic products, with each unlawful act or omission constituting a separate violation.	2018	2,852	2,924
			Penalty imposed for any related series of violations of requirements relating to electronic products..	2018	972,285	996,806
42 U.S.C:						
262(d)		FDA	Penalty per day for violation of order of recall of biological product presenting imminent or substantial hazard.	2018	223,629	229,269

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
263b(h)(3)		FDA	Penalty for failure to obtain a mammography certificate as required.	2018	17,395	17,834
300aa–28(b)(1)		FDA	Penalty per occurrence for any vaccine manufacturer that intentionally destroys, alters, falsifies, or conceals any record or report required.	2018	223,629	229,269
256b(d)(1)(B)(vi)		HRSA	Penalty for each instance of overcharging a 340B covered entity.	2018	5,639	5,781
299c–(3)(d)		AHRQ	Penalty for an establishment or person supplying information obtained in the course of activities for any purpose other than the purpose for which it was supplied.	2018	14,664	15,034
653(l)(2)	45 CFR 303.21(f)	ACF	Penalty for Misuse of Information in the National Directory of New Hires.	2018	1,504	1,542
262a(i)(1)	42 CFR 1003.910	OIG	Penalty for each individual who violates safety and security procedures related to handling dangerous biological agents and toxins.	2018	340,130	348,708
			Penalty for any other person who violates safety and security procedures related to handling dangerous biological agents and toxins.	2018	680,262	697,418
300jj–51		OIG	Penalty per violation for committing information blocking.	2018	1,037,104	1,063,260
1320a–7a(a)	42 CFR 1003.210(a)(1)	OIG	Penalty for knowingly presenting or causing to be presented to an officer, employee, or agent of the United States a false claim.	2018	20,000	20,504
			Penalty for knowingly presenting or causing to be presented a request for payment which violates the terms of an assignment, agreement, or PPS agreement.	2018	20,000	20,504
	42 CFR 1003.210(a)(2)		Penalty for knowingly giving or causing to be presented to a participating provider or supplier false or misleading information that could reasonably be expected to influence a discharge decision.	2018	30,000	30,757
	42 CFR 1003.210(a)(3)		Penalty for an excluded party retaining ownership or control interest in a participating entity.	2018	20,000	20,504
	42 CFR 1003.1010		Penalty for remuneration offered to induce program beneficiaries to use particular providers, practitioners, or suppliers.	2018	20,000	20,504
	42 CFR 1003.210(a)(4)		Penalty for employing or contracting with an excluded individual.	2018	20,000	20,504
	42 CFR 1003.310(a)(3)		Penalty for knowing and willful solicitation, receipt, offer, or payment of remuneration for referring an individual for a service or for purchasing, leasing, or ordering an item to be paid for by a Federal health care program.	2018	100,000	102,522
	42 CFR 1003.210(a)(1)		Penalty for ordering or prescribing medical or other item or service during a period in which the person was excluded.	2018	20,000	20,504
	42 CFR 1003.210(a)(6)		Penalty for knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider or supplier.	2018	100,000	102,522
	42 CFR 1003.210(a)(8)		Penalty for knowing of an overpayment and failing to report and return.	2018	20,000	20,504
	42 CFR 1003.210(a)(7)		Penalty for making or using a false record or statement that is material to a false or fraudulent claim.	2018	100,000	102,522
	42 CFR 1003.210(a)(9)		Penalty for failure to grant timely access to HHS OIG for audits, investigations, evaluations, and other statutory functions of HHS OIG.	2018	30,000	30,757
1320a–7a(b)		OIG	Penalty for payments by a hospital or critical access hospital to induce a physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits	2018	5,000	5,126

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
			Penalty for physicians who knowingly receive payments from a hospital or critical access hospital to induce such physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits.	2018	5,000	5,126
	42 CFR 1003.210(a)(10)		Penalty for a physician who executes a document that falsely certifies home health needs for Medicare beneficiaries	2018	10,000	10,252
1320a–7a(o)		OIG	Penalty for knowingly presenting or causing to be presented a false or fraudulent specified claim under a grant, contract, or other agreement for which the Secretary provides funding	2016	10,000	10,461
			Knowingly makes, uses, or causes to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document required to directly or indirectly receive or retain funds provided pursuant to grant, contract, or other agreement	2016	50,000	52,308
			Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent specified claim under grant, contract, or other agreement.	2016	50,000	52,308
			Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit funds or property with respect to grant, contract, or other agreement, or knowingly conceals or improperly avoids or decreases any such obligation..	2016	*50,000	**52,308
			Fails to grant timely access, upon reasonable request, to the I.G. for purposes of audits, investigations, evaluations, or other statutory functions of I.G. in matters involving grants, contracts, or other agreements..	2016	15,000	15,692
1320a–7e(b)(6)(A)	42 CFR 1003.810	OIG	Penalty for failure to report any final adverse action taken against a health care provider, supplier, or practitioner.	2018	38,159	39,121
1320b–10(b)(1)	42 CFR 1003.610(a)	OIG	Penalty for the misuse of words, symbols, or emblems in communications in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS.	2018	10,260	10,519
1320b–10(b)(2)	42 CFR 1003.610(a)	OIG	Penalty for the misuse of words, symbols, or emblems in a broadcast or telecast in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS.	2018	51,302	52,596
1395i–3(b)(3)(B)(ii)(1)	42 CFR 1003.210(a)(11)	OIG	Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2018	2,140	2,194
1395i–3(b)(3)(B)(ii)(2)	42 CFR 1003.210(a)(11)	OIG	Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2018	10,697	10,967
1395i–3(g)(2)(A)	42 CFR 1003.1310	OIG	Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2018	4,280	4,388
1395w–27(g)(2)(A)	42 CFR 1003.410	OIG	Penalty for a Medicare Advantage organization that substantially fails to provide medically necessary, required items and services.	2018	38,954	39,936
			Penalty for a Medicare Advantage organization that charges excessive premiums.	2018	38,159	39,121
			Penalty for a Medicare Advantage organization that improperly expels or refuses to reenroll a beneficiary.	2018	38,159	39,121

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
			Penalty for a Medicare Advantage organization that engages in practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2018	152,638	156,488
			Penalty per individual who does not enroll as a result of a Medicare Advantage organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2018	22,896	23,473
			Penalty for a Medicare Advantage organization misrepresenting or falsifying information to Secretary.	2018	152,638	156,488
			Penalty for a Medicare Advantage organization misrepresenting or falsifying information to individual or other entity.	2018	38,159	39,121
			Penalty for Medicare Advantage organization interfering with provider's advice to enrollee and non-MCO affiliated providers that balance bill enrollees.	2018	38,159	39,121
			Penalty for a Medicare Advantage organization that employs or contracts with excluded individual or entity.	2018	38,159	39,121
			Penalty for a Medicare Advantage organization enrolling an individual in without prior written consent.	2018	38,159	39,121
			Penalty for a Medicare Advantage organization transferring an enrollee to another plan without consent or solely for the purpose of earning a commission.	2018	38,159	39,121
			Penalty for a Medicare Advantage organization failing to comply with marketing restrictions or applicable implementing regulations or guidance.	2018	38,159	39,121
			Penalty for a Medicare Advantage organization employing or contracting with an individual or entity who violates 1395w–27(g)(1)(A)–(J).	2018	38,159	39,121
1395w–141(i)(3)		OIG	Penalty for a prescription drug card sponsor that falsifies or misrepresents marketing materials, overcharges program enrollees, or misuse transitional assistance funds.	2018	13,333	13,669
1395cc(g)	42 CFR 1003.210(a)(5)	OIG	Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities.	2018	5,186	5,317
1395dd(d)(1)	42 CFR 1003.510	OIG	Penalty for a hospital with 100 beds or more or responsible physician dumping patients needing emergency medical care.	2018	106,965	109,663
			Penalty for a hospital with less than 100 beds dumping patients needing emergency medical care.	2018	53,484	54,833
1395mm(i)(6)(B)(i)	42 CFR 1003.410	OIG	Penalty for a HMO or competitive plan if such plan substantially fails to provide medically necessary, required items or services.	2018	53,484	54,833
			Penalty for HMOs/competitive medical plans that charge premiums in excess of permitted amounts.	2018	53,484	54,833
			Penalty for a HMO or competitive medical plan that expels or refuses to reenroll an individual per prescribed conditions.	2018	53,484	54,833
			Penalty for a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in future.	2018	213,932	219,327
			Penalty per individual not enrolled in a plan as a result of a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in the future.	2018	30,782	31,558
			Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to the Secretary.	2018	213,932	219,327

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
			Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to an individual or any other entity.	2018	53,484	54,833
			Penalty for failure by HMO or competitive medical plan to assure prompt payment of Medicare risk sharing contracts or incentive plan provisions.	2018	53,484	54,833
			Penalty for HMO that employs or contracts with excluded individual or entity.	2018	49,096	50,334
1395nn(g)(3)	42 CFR 1003.310	OIG	Penalty for submitting or causing to be submitted claims in violation of the Stark Law's restrictions on physician self-referrals.	2018	24,748	25,372
1395nn(g)(4)	42 CFR 1003.310	OIG	Penalty for circumventing Stark Law's restrictions on physician self-referrals.	2018	164,992	169,153
1395ss(d)(1)	42 CFR 1003.1110	OIG	Penalty for a material misrepresentation regarding Medigap compliance policies.	2018	10,260	10,519
1395ss(d)(2)	42 CFR 1003.1110	OIG	Penalty for selling Medigap policy under false pretense.	2018	10,260	10,519
1395ss(d)(3)(A)(ii)	42 CFR 1003.1110	OIG	Penalty for an issuer that sells health insurance policy that duplicates benefits.	2018	46,192	47,357
			Penalty for someone other than issuer that sells health insurance that duplicates benefits.	2018	27,714	28,413
1395ss(d)(4)(A)	42 CFR 1003.1110	OIG	Penalty for using mail to sell a non-approved Medigap insurance policy.	2018	10,260	10,519
1396b(m)(5)(B)(i)	42 CFR 1003.410	OIG	Penalty for a Medicaid MCO that substantially fails to provide medically necessary, required items or services.	2018	51,302	52,596
			Penalty for a Medicaid MCO that charges excessive premiums.	2018	51,302	52,596
			Penalty for a Medicaid MCO that improperly expels or refuses to reenroll a beneficiary.	2018	205,211	210,386
			Penalty per individual who does not enroll as a result of a Medicaid MCO's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2018	30,782	31,558
			Penalty for a Medicaid MCO misrepresenting or falsifying information to the Secretary.	2018	205,211	210,386
			Penalty for a Medicaid MCO misrepresenting or falsifying information to an individual or another entity.	2018	51,302	52,596
			Penalty for a Medicaid MCO that fails to comply with contract requirements with respect to physician incentive plans.	2018	46,192	47,357
1396r(b)(3)(B)(ii)(I)	42 CFR 1003.210(a)(11)	OIG	Penalty for willfully and knowingly certifying a material and false statement in a Skilled Nursing Facility resident assessment.	2018	2,140	2,194
1396r(b)(3)(B)(ii)(II)	42 CFR 1003.210(a)(11)	OIG	Penalty for willfully and knowingly causing another individual to certify a material and false statement in a Skilled Nursing Facility resident assessment.	2018	10,697	10,967
1396r(g)(2)(A)(i)	42 CFR 1003.1310	OIG	Penalty for notifying or causing to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2018	4,280	4,388
1396r–8(b)(3)(B)	42 CFR 1003.1210	OIG	Penalty for the knowing provision of false information or refusing to provide information about charges or prices of a covered outpatient drug.	2018	184,767	189,427
1396r–8(b)(3)(C)(i)	42 CFR 1003.1210	OIG	Penalty per day for failure to timely provide information by drug manufacturer with rebate agreement.	2018	18,477	18,943
1396r–8(b)(3)(C)(ii)	42 CFR 1003.1210	OIG	Penalty for knowing provision of false information by drug manufacturer with rebate agreement.	2018	184,767	189,427
1396t(i)(3)(A)	42 CFR 1003.1310	OIG	Penalty for notifying home and community-based providers or settings of survey.	2018	3,695	3,788
11131(c)	42 CFR 1003.810	OIG	Penalty for failing to report a medical malpractice claim to National Practitioner Data Bank.	2018	22,363	22,927

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
11137(b)(2)	42 CFR 1003.810	OIG	Penalty for breaching confidentiality of information reported to National Practitioner Data Bank.	2018	22,363	22,927
299b–22(f)(1)	42 CFR 3.404	OCR	Penalty for violation of confidentiality provision of the Patient Safety and Quality Improvement Act.	2018	12,383	12,695
	45 CFR 160.404(b)(1)(i), (ii)	OCR	Penalty for each pre-February 18, 2009 violation of the HIPAA administrative simplification provisions.	2018	155.10232	159
			Calendar Year Cap	2018	38,954	39,936
1320(d)–5(a)	45 CFR 160.404(b)(2)(i)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the covered entity or business associate did not know and by exercising reasonable diligence, would not have known that the covered entity or business associate violated such a provision:	2018		
			Minimum	2018	114.28592	117
			Maximum	2018	57,051	58,490
			Calendar Year Cap	2018	1,711,533	1,754,698
	45 CFR 160.404(b)(2)(ii)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to reasonable cause and not to willful neglect:	2018		
			Minimum	2018	1,141	1,170
			Maximum	2018	57,051	58,490
			Calendar Year Cap	2018	1,711,533	1,754,698
	45 CFR 160.404(b)(2)(iii)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or, by exercising reasonable diligence, would have known that the violation occurred:	2018		
			Minimum	2018	11,410	11,698
			Maximum	2018	57,051	58,490
			Calendar Year Cap	2018	1,711,533	1,754,698
	45 CFR 160.404(b)(2)(iv)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or by exercising reasonable diligence, would have known that the violation occurred:	2018		
			Minimum	2018	57,051	58,490
			Maximum	2018	1,711,533	1,754,698
			Calendar Year Cap	2018	1,711,533	1,754,698
263a(h)(2)(B) & 1395w–2(b)(2)(A)(ii).	42 CFR 493.1834(d)(2)(i)	CMS	Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy:	2018		
			Minimum	2018	6,259	6,417
			Maximum	2018	20,521	21,039
	42 CFR 493.1834(d)(2)(ii)	CMS	Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy:	2018		
			Minimum	2018	103	106
			Maximum	2018	6,156	6,311
300gg–15(f)	45 CFR 147.200(e)	CMS	Failure to provide the Summary of Benefits and Coverage.	2018	1,128	1,156
300gg–18	45 CFR 158.606	CMS	Penalty for violations of regulations related to the medical loss ratio reporting and rebating.	2018	113	116

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1320a–7h(b)(1)	42 CFR 402.105(d)(5), 42 CFR 403.912(a) & (c).	CMS	Penalty for manufacturer or group purchasing organization failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests:	2018		
			Minimum	2018	1,128	1,156
			Maximum	2018	11,278	11,562
			Calendar Year Cap	2018	169,170	173,436
1320a–7h(b)(2)	42 CFR 402.105(h), 42 CFR 403.912(b) & (c).	CMS	Penalty for manufacturer or group purchasing organization knowingly failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests:	2018		
			Minimum	2018	11,278	11,562
			Maximum	2018	112,780	115,624
			Calendar Year Cap	2018	1,127,799	1,156,242
		CMS	Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility.	2018	112,780	115,624
1320a–7j(h)(3)(A)	42 CFR 488.446(a)(1), (2), & (3).	CMS	Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure.	2018	564.28673	578
			Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure.	2018	1,692	1,735
			Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure.	2018	3,383	3,468
1320a–8(a)(1)		CMS	Penalty for an entity knowingly making a false statement or representation of material fact in the determination of the amount of benefits or payments related to old-age, survivors, and disability insurance benefits, special benefits for certain World War II veterans, or supplemental security income for the aged, blind, and disabled.	2018	8,249	8,457
			Penalty for violation of 42 U.S.C. 1320a–8(a)(1) if the violator is a person who receives a fee or other income for services performed in connection with determination of the benefit amount or the person is a physician or other health care provider who submits evidence in connection with such a determination.	2018	7,779	7,975
1320a–8(a)(3)		CMS	Penalty for a representative payee (under 42 U.S.C. 405(j), 1007, or 1383(a)(2)) converting any part of a received payment from the benefit programs described in the previous civil monetary penalty to a use other than for the benefit of the beneficiary.	2018	6,460	6,623
1320b–25(c)(1)(A)		CMS	Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility.	2018	225,560	231,249
1320b–25(c)(2)(A)		CMS	Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual.	2018	338,339	346,872
1320b–25(d)(2)		CMS	Penalty for a long-term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse.	2018	225,560	231,249

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1395b–7(b)(2)(B)	42 CFR 402.105(g)	CMS	Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request.	2018	152	156
1395i–3(h)(2)(B)(ii)(I)	42 CFR 488.408(d)(1)(iii)	CMS	Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements:	2018		
			Minimum	2018	107	110
			Maximum	2018	6,417	6,579
	42 CFR 488.408(d)(1)(iv)	CMS	Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
	42 CFR 488.408(e)(1)(iii)	CMS	Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements:	2018		
			Minimum	2018	6,525	6,690
			Maximum	2018	21,393	21,933
	42 CFR 488.408(e)(1)(iv)	CMS	Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
	42 CFR 488.408(e)(2)(ii)	CMS	Penalty per day and per instance for a Skilled Nursing Facility that has Category 3 noncompliance with Immediate Jeopardy:	2018		
			Per Day (Minimum)	2018	6,525	6,690
			Per Day (Maximum)	2018	21,393	21,933
			Per Instance (Minimum)	2018	2,140	2,194
			Per Instance (Maximum)	2018	21,393	21,933
	42 CFR 488.438(a)(1)(i)	CMS	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day:	2018		
			Minimum	2018	6,525	6,690
			Maximum	2018	21,393	21,933
	42 CFR 488.438(a)(1)(ii)	CMS	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day:	2018		
			Minimum	2018	107	110
			Maximum	2018	6,417	6,579
	42 CFR 488.438(a)(2)	CMS	Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
1395l(h)(5)(D)	42 CFR 402.105(d)(2)(i)	CMS	Penalty for knowingly, willfully, and repeatedly billing for a clinical diagnostic laboratory test other than on an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395l(i)(6)		CMS	Penalty for knowingly and willfully presenting or causing to be presented a bill or request for payment for an intraocular lens inserted during or after cataract surgery for which the Medicare payment rate includes the cost of acquiring the class of lens involved.	2018	4,104	4,208
1395l(q)(2)(B)(i)	42 CFR 402.105(a)	CMS	Penalty for knowingly and willfully failing to provide information about a referring physician when seeking payment on an unassigned basis.	2018	3,928	4,027
1395m(a)(11)(A)	42 CFR 402.1(c)(4), 402.105(d)(2)(ii).	CMS	Penalty for any durable medical equipment supplier that knowingly and willfully charges for a covered service that is furnished on a rental basis after the rental payments may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1395m(a)(18)(B)	42 CFR 402.1(c)(5), 402.105(d)(2)(iii).	CMS	Penalty for any nonparticipating durable medical equipment supplier that knowingly and willfully fails to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395m(b)(5)(C)	42 CFR 402.1(c)(6), 402.105(d)(2)(iv).	CMS	Penalty for any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge for radiologist services. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395m(h)(3)	42 CFR 402.1(c)(8), 402.105(d)(2)(vi).	CMS	Penalty for any supplier of prosthetic devices, orthotics, and prosthetics that knowing and willfully charges for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(a)(11)(A), that is in the same manner as 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395m(j)(2)(A)(iii)		CMS	Penalty for any supplier of durable medical equipment including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully distributes a certificate of medical necessity in violation of Section 1834(j)(2)(A)(i) of the Act or fails to provide the information required under Section 1834(j)(2)(A)(ii) of the Act.	2018	1,650	1,692
1395m(j)(4)	42 CFR 402.1(c)(10), 402.105(d)(2)(vii).	CMS	Penalty for any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for series billed other than on as assignment-related basis under certain conditions. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(j)(4) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395m(k)(6)	42 CFR 402.1(c)(31), 402.105(d)(3).	CMS	Penalty for any person or entity who knowingly and willfully bills or collects for any outpatient therapy services or comprehensive outpatient rehabilitation services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(k)(6) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395m(l)(6)	42 CFR 402.1(c)(32), 402.105(d)(4).	CMS	Penalty for any supplier of ambulance services who knowingly and willfully fills or collects for any services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395u(b)(18)(B)	42 CFR 402.1(c)(11), 402.105(d)(2)(viii).	CMS	Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1395u(j)(2)(B)	42 CFR 402.1(c)	CMS	Penalty for any physician who charges more than 125% for a non-participating referral. (Penalties are assessed in the same manner as 42 U.S.C. 1320a–7a(a)).	2018	15,582	15,975
1395u(k)	42 CFR 402.1(c)(12), 402.105(d)(2)(ix).	CMS	Penalty for any physician who knowingly and willfully presents or causes to be presented a claim for bill for an assistant at a cataract surgery performed on or after March 1, 1987, for which payment may not be made because of section 1862(a)(15). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395u(l)(3)	42 CFR 402.1(c)(13), 402.105(d)(2)(x).	CMS	Penalty for any nonparticipating physician who does not accept payment on an assignment-related basis and who knowingly and willfully fails to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality under 1842(l)(1)(A). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395u(m)(3)	42 CFR 402.1(c)(14), 402.105(d)(2)(xi).	CMS	Penalty for any nonparticipating physician charging more than $500 who does not accept payment for an elective surgical procedure on an assignment related basis and who knowingly and willfully fails to disclose the required information regarding charges and coinsurance amounts and fails to refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395u(n)(3)	42 CFR 402.1(c)(15), 402.105(d)(2)(xii).	CMS	Penalty for any physician who knowingly, willfully, and repeatedly bills one or more beneficiaries for purchased diagnostic tests any amount other than the payment amount specified by the Act. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395u(o)(3)(B)	42 CFR 414.707(b)	CMS	Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services pertaining to drugs or biologics by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395u(p)(3)(A)		CMS	Penalty for any physician or practitioner who knowingly and willfully fails promptly to provide the appropriate diagnosis codes upon CMS or Medicare administrative contractor request for payment or bill not submitted on an assignment-related basis.	2018	4,104	4,208
1395w–3a(d)(4)(A)	42 CFR 414.806	CMS	Penalty for a pharmaceutical manufacturer's misrepresentation of average sales price of a drug, or biologic.	2018	13,333	13,669

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1395w–4(g)(1)(B)	42 CFR 402.1(c)(17), 402.105(d)(2)(xiii).	CMS	Penalty for any nonparticipating physician, supplier, or other person that furnishes physician services not on an assignment-related basis who either knowingly and willfully bills or collects in excess of the statutorily-defined limiting charge or fails to make a timely refund or adjustment. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395w–4(g)(3)(B)	42 CFR 402.1(c)(18), 402.105(d)(2)(xiv).	CMS	Penalty for any person that knowingly and willfully bills for statutorily defined State-plan approved physicians' services on any other basis than an assignment-related basis for a Medicare/Medicaid dual eligible beneficiary. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,582	15,975
1395w–27(g)(3)(A); 1857(g)(3) (A).	42 CFR 422.760(b)(1)–(2); 42 CFR 423.760(b)(1)–(2).	CMS	Penalty for each termination determination the Secretary makes that is the result of actions by a Medicare Advantage organization or Part D sponsor that has adversely affected an individual covered under the organization's contract.	2018	38,159	39,121
1395w–27(g)(3)(B); 1857(g)(3)(B).	42 CFR 422.760(b)(3); 42 CFR 423.760(b)(3).	CMS	Penalty for each week beginning after the initiation of civil money penalty procedures by the Secretary because a Medicare Advantage organization or Part D sponsor has failed to carry out a contract, or has carried out a contract inconsistently with regulations.	2018	15,264	15,649
1395w–27(g)(3)(D); 1857(g)(3)(D).	.....	CMS	Penalty for a Medicare Advantage organization's or Part D sponsor's early termination of its contract.	2018	141,760	145,335
1395y(b)(3)(C)	42 CFR 411.103(b)	CMS	Penalty for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits not to enroll under a group health plan or large group health plan which would be a primary plan.	2018	9,239	9,472
1395y(b)(5)(C)(ii)	42 CFR 402.1(c)(20), 42 CFR 402.105(b)(2).	CMS	Penalty for any non-governmental employer that, before October 1, 1998, willfully or repeatedly failed to provide timely and accurate information requested relating to an employee's group health insurance coverage.	2018	1,504	1,542
1395y(b)(6)(B)	42 CFR 402.1(c)(21), 402.105(a).	CMS	Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form.	2018	3,300	3,383
1395y(b)(7)(B)(i)	.....	CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2018	1,181	1,211
1395y(b)(8)(E)	.....	CMS	Penalty for any non-group health plan that fails to identify claimants who are Medicare beneficiaries and provide information to the HHS Secretary to coordinate benefits and pursue any applicable recovery claim.	2018	1,181	1,211
1395nn(g)(5)	42 CFR 411.361	CMS	Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements.	2018	19,639	20,134

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1395pp(h)	42 CFR 402.1(c)(23), 402.105(d)(2)(xv).	CMS	Penalty for any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries under certain conditions. (42 U.S.C. 1395(m)(18) sanctions apply here in the same manner, which is under 1395u(j)(2) and 1320a–7a(a)).	2018	15,582	15,975
1395ss(a)(2)	42 CFR 402.1(c)(24), 405.105(f)(1).	CMS	Penalty for any person that issues a Medicare supplemental policy that has not been approved by the State regulatory program or does not meet Federal standards after a statutorily defined effective date.	2018	53,483	54,832
1395ss(d)(3)(A)(vi) (II)		CMS	Penalty for someone other than issuer that sells or issues a Medicare supplemental policy to beneficiary without a disclosure statement.	2018	27,714	28,413
			Penalty for an issuer that sells or issues a Medicare supplemental policy without disclosure statement.	2018	46,192	47,357
1395ss(d)(3)(B)(iv)		CMS	Penalty for someone other than issuer that sells or issues a Medicare supplemental policy without acknowledgement form.	2018	27,714	28,413
			Penalty for issuer that sells or issues a Medicare supplemental policy without an acknowledgement form.	2018	46,192	47,357
1395ss(p)(8)	42 CFR 402.1(c)(25), 402.105(e).	CMS	Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute.	2018	27,714	28,413
	42 CFR 402.1(c)(25), 405.105(f)(2).	CMS	Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute.	2018	46,192	47,357
1395ss(p)(9)(C)	42 CFR 402.1(c)(26), 402.105(e).	CMS	Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits.	2018	27,714	28,413
	42 CFR 402.1(c)(26), 405.105(f)(3), (4).		Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits.	2018	46,192	47,357
1395ss(q)(5)(C)	42 CFR 402.1(c)(27), 405.105(f)(5).	CMS	Penalty for any person that fails to suspend the policy of a policyholder made eligible for medical assistance or automatically reinstates the policy of a policyholder who has lost eligibility for medical assistance, under certain circumstances.	2018	46,192	47,357
1395ss(r)(6)(A)	42 CFR 402.1(c)(28), 405.105(f)(6).	CMS	Penalty for any person that fails to provide refunds or credits as required by section 1882(r)(1)(B).	2018	46,192	47,357
1395ss(s)(4)	42 CFR 402.1(c)(29), 405.105(c).	CMS	Penalty for any issuer of a Medicare supplemental policy that does not waive listed time periods if they were already satisfied under a proceeding Medicare supplemental policy, or denies a policy, or conditions the issuances or effectiveness of the policy, or discriminates in the pricing of the policy base on health status or other specified criteria.	2018	19,609	20,104
1395ss(t)(2)	42 CFR 402.1(c)(30), 405.105(f)(7).	CMS	Penalty for any issuer of a Medicare supplemental policy that fails to fulfill listed responsibilities.	2018	46,192	47,357

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
1395ss(v)(4)(A)		CMS	Penalty someone other than issuer who sells, issues, or renews a medigap Rx policy to an individual who is a Part D enrollee.	2018	19,999	20,503
			Penalty for an issuer who sells, issues, or renews a Medigap Rx policy who is a Part D enrollee.	2018	33,333	34,174
1395bbb(c)(1)	42 CFR 488.725(c)	CMS	Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted.	2018	4,280	4,388
1395bbb(f)(2)(A)(i)	42 CFR 488.845(b)(2)(iii) 42 CFR 488.845(b)(3)–(6); and 42 CFR 488.845(d)(1)(ii).	CMS	Maximum daily penalty amount for each day a home health agency is not in compliance with statutory requirements.	2018	20,521	21,039
	42 CFR 488.845(b)(3)		Penalty per day for home health agency's noncompliance (Upper Range):	2018		
			Minimum	2018	17,443	17,883
			Maximum	2018	20,521	21,039
	42 CFR 488.845(b)(3)(i)		Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm.	2018	20,521	21,039
	42 CFR 488.845(b)(3)(ii)		Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm.	2018	18,468	18,934
	42 CFR 488.845(b)(3)(iii)		Penalty for an isolated incident of noncompliance in violation of established HHA policy.	2018	17,443	17,883
	42 CFR 488.845(b)(4)		Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Lower Range):	2018		
			Minimum	2018	3,079	3,157
			Maximum	2018	17,443	17,883
	42 CFR 488.845(b)(5)		Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range):	2018		
			Minimum	2018	1,026	1,052
			Maximum	2018	8,208	8,415
	42 CFR 488.845(b)(6)		Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey:	2018		
			Minimum	2018	2,052	2,104
			Maximum	2018	20,521	21,039
			Penalty for each day of noncompliance (Maximum).	2018	20,521	21,039
	42 CFR 488.845(d)(1)(ii)		Penalty for each day of noncompliance (Maximum).	2018	20,521	21,039
1396b(m)(5)(B)	42 CFR 460.46 (a)(1)	CMS	Penalty for discriminating or discouraging enrollment or disenrollment of participants on the basis of an individual's health status or need for health care services.	2018		
	42 CFR 460.46 (a)(1)		Minimum	2018	22,896	23,473
	42 CFR 460.46 (a)(1)		Maximum	2018	152,638	156,488
	42 CFR 460.46 (a)(2)		Penalty for a PACE organization that charges excessive premiums.	2018	38,159	39,121
	42 CFR 460.46 (a)(3)		Penalty for a PACE organization misrepresenting or falsifying information to CMS, the State, or an individual or other entity.	2018	152,638	156,488
	42 CFR 460.46 (a)(4)		Penalty for each determination the CMS makes that the PACE organization has failed to provide medically necessary items and services of the failure has adversely affected (or has the substantial likelihood of adversely affecting) a PACE participant.	2018	38,159	39,121
	42 CFR 460.46 (a)(4)		Penalty for involuntarily disenrolling a participant.	2018	38,159	39,121

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
	42 CFR 460.46 (a)(4)		Penalty for PACE organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2018	38,159	39,121
1396r(h)(3)(C)(ii)(I)	42 CFR 488.408(d)(1)(iii)	CMS	Penalty per day for a nursing facility's failure to meet a Category 2 Certification:	2018		
			Minimum	2018	107.14305	110
			Maximum	2018	6,417	6,579
	42 CFR 488.408(d)(1)(iv)	CMS	Penalty per instance for a nursing facility's failure to meet Category 2 certification:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
	42 CFR 488.408(e)(1)(iii)	CMS	Penalty per day for a nursing facility's failure to meet Category 3 certification:	2018		
			Minimum	2018	6,525	6,690
			Maximum	2018	21,393	21,933
	42 CFR 488.408(e)(1)(iv)	CMS	Penalty per instance for a nursing facility's failure to meet Category 3 certification:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
	42 CFR 488.408(e)(2)(ii)	CMS	Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
	42 CFR 488.438(a)(1)(i)	CMS	Penalty per day for nursing facility's failure to meet certification (Upper Range):	2018		
			Minimum	2018	6,525	6,690
			Maximum	2018	21,393	21,933
	42 CFR 488.438(a)(1)(ii)	CMS	Penalty per day for nursing facility's failure to meet certification (Lower Range):	2018		
			Minimum	2018	107.14305	110
			Maximum	2018	6,417	6,579
	42 CFR 488.438(a)(2)	CMS	Penalty per instance for nursing facility's failure to meet certification:	2018		
			Minimum	2018	2,140	2,194
			Maximum	2018	21,393	21,933
1396r(f)(2)(B)(iii)(I)(c)	42 CFR 483.151(b)(2)(iv) and (b)(3)(iii).	CMS	Grounds to prohibit approval of Nurse Aide Training Program—if assessed a penalty in 1819(h)(2)(B)(i) or 1919(h)(2)(A)(ii) of "not less than $5,000" [Not CMP authority, but a specific CMP amount (CMP at this level) that is the triggering condition for disapproval].	2018	10,697	10,967
1396r(h)(3)(C)(ii)(I)	42 CFR 483.151(c)(2)	CMS	Grounds to waive disapproval of nurse aide training program—reference to disapproval based on imposition of CMP "not less than $5,000" [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program].	2018	10,697	10,967
1396t(j)(2)(C)		CMS	Penalty for each day of noncompliance for a home or community care provider that no longer meets the minimum requirements for home and community care:	2018		
			Minimum	2018	2	2
			Maximum	2018	18,477	18,943
1396u–2(e)(2)(A)(i)	42 CFR 438.704	CMS	Penalty for a Medicaid managed care organization that fails substantially to provide medically necessary items and services.	2018	38,159	39,121
			Penalty for Medicaid managed care organization that imposes premiums or charges on enrollees in excess of the premiums or charges permitted.	2018	38,159	39,121
			Penalty for a Medicaid managed care organization that misrepresents or falsifies information to another individual or entity.	2018	38,159	39,121
			Penalty for a Medicaid managed care organization that fails to comply with the applicable statutory requirements for such organizations.	2018	38,159	39,121
1396u–2(e)(2)(A)(ii)	42 CFR 438.704	CMS	Penalty for a Medicaid managed care organization that misrepresents or falsifies information to the HHS Secretary.	2018	152,638	156,488

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective November 5, 2019]

U.S.C.	CFR [1]	HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2018 Maximum adjusted penalty ($)	2019 Maximum adjusted penalty ($) [4]
			Penalty for Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status.	2018	152,638	156,488
1396u–2(e)(2)(A)(iv)	42 CFR 438.704	CMS	Penalty for each individual that does not enroll as a result of a Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status.	2018	22,896	23,473
1396u(h)(2)	42 CFR Part 441, Subpart I	CMS	Penalty for a provider not meeting one of the requirements relating to the protection of the health, safety, and welfare of individuals receiving community supported living arrangements services.	2018	21,393	21,933
1396w–2(c)(1)		CMS	Penalty for disclosing information related to eligibility determinations for medical assistance programs.	2018	11,410	11,698
18041(c)(2)	45 CFR 150.315; 45 CFR 156.805(c).	CMS	Failure to comply with requirements of the Public Health Services Act; Penalty for violations of rules or standards of behavior associated with issuer participation in the Federally-facilitated Exchange. (42 U.S.C. 300gg–22(b)(2)(C)).	2018	155.10232	159
18081(h)(1)(A)(i)(II)	42 CFR 155.285	CMS	Penalty for providing false information on Exchange application.	2018	28,195	28,906
18081(h)(1)(B)	42 CFR 155.285	CMS	Penalty for knowingly or willfully providing false information on Exchange application.	2018	281,949	289,060
18081(h)(2)	42 CFR 155.260	CMS	Penalty for knowingly or willfully disclosing protected information from Exchange.	2018	28,195	28,906
31 U.S.C.:						
1352	45 CFR 93.400(e)	HHS	Penalty for the first time an individual makes an expenditure prohibited by regulations regarding lobbying disclosure, absent aggravating circumstances.	2018	19,639	20,134
			Penalty for second and subsequent offenses by individuals who make an expenditure prohibited by regulations regarding lobbying disclosure:	2018	.....	.....
			Minimum	2018	19,639	20,134
			Maximum	2018	196,387	201,340
			Penalty for the first time an individual fails to file or amend a lobbying disclosure form, absent aggravating circumstances.	2018	19,639	20,134
			Penalty for second and subsequent offenses by individuals who fail to file or amend a lobbying disclosure form, absent aggravating circumstances:	2018	.....	.....
			Minimum	2018	19,639	20,134
			Maximum	2018	196,387	201,340
	45 CFR Part 93, Appendix A	HHS	Penalty for failure to provide certification regarding lobbying in the award documents for all sub-awards of all tiers:	2018	.....	.....
			Minimum	2018	19,639	20,134
			Maximum	2018	196,387	201,340
			Penalty for failure to provide statement regarding lobbying for loan guarantee and loan insurance transactions:	2018	.....	.....
			Minimum	2018	19,639	20,134
			Maximum	2018	196,387	201,340
3801–3812	45 CFR 79.3(a)(1)(iv)	HHS	Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department.	2018	10,261	10,520
	45 CFR 79.3(b)(1)(ii)		Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department.	2018	10,261	10,520

[1] Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.
[2] The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.
[3] Statutory or Inflation Act Adjustment.
[4] The cost of living multiplier for 2019, based on the CPI–U for the month of October 2018, not seasonally adjusted, is 1.02522, as indicated in OMB Memorandum M–19–04, ''Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015'' (December 14, 2018).
* For each false record or statement, 10,000 per day.
** For each false record statement, 10,461 per day.

Dated: October 28, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–23955 Filed 11–4–19; 8:45 am]

BILLING CODE 4150–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 17–79; DA 19–1024]

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) repeals a section of the Commission's rules implementing the small wireless facilities exemption and deletes a cross-reference to that section contained elsewhere in the Commission's rules.

DATES: Effective December 5, 2019.

FOR FURTHER INFORMATION CONTACT: Belinda Nixon, *Belinda.Nixon@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, 202–418–1382.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in WT Docket No. 17–79; DA 19–1024, adopted and released on October 8, 2019. The complete text of this document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal 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 (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. In *United Keetoowah Band of Cherokee Indians* v. *FCC,* No. 18–1129, 2019 WL 3756373 (D.C. Cir Aug. 9, 2019) (*United Keetoowah*), the U.S. Court of Appeals for the District of Columbia Circuit vacated those portions of the Commission's 2018 *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (*Second Report and Order*), 83 FR 19440, May 3, 2018, that exempted certain small wireless facilities from federal environmental and historic preservation review. Pursuant to F.R. App. P. 41(b), the court issued its mandate on October 7, 2019. Consistent with the court's mandate, this *Order* repeals the section of the Commission's rules implementing the small wireless facilities exemption and deletes a cross-reference to that section contained elsewhere in the Commission's rules.

2. The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. 553(b), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate.

3. Accordingly, *It Is Ordered* that § 1.1312(e)(2) of the Commission's rules, 47 CFR 1.1312(e)(2), *Is Repealed* and § 1.6002, 47 CFR 1.6002, is amended as set forth in Appendix A of the *Order,* effective December 5, 2019.

4. This action is taken pursuant to sections 4(i), 4(j), 5(c), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), 303 and 309(j) and § 0.331(d) of the Commission's rules, 47 CFR 0.331(d).

5. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are major under the Congressional Review Act, 5 U.S.C. 804(2). The Bureau will send a copy of this *Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). The Bureau finds good cause to make this rule effective earlier than 60 days after the *Order* is submitted to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 808(2), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate.

List of Subjects in 47 CFR Part 1

Communications equipment, Environmental protection, Historic preservation, Radio, Telecommunications.

Federal Communications Commission.

Amy Brett,

Associate Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Section 1.1312 is amended by revising paragraph (e) to read as follows:

§ 1.1312 Facilities for which no preconstruction authorization is required.

* * * * *

(e) Paragraphs (a) through (d) of this section shall not apply to the construction of mobile stations.

■ 3. Section 1.6002 is amended by revising paragraph (l) to read as follows:

§ 1.6002 Definitions.

* * * * *

(l) *Small wireless facilities* are facilities that meet each of the following conditions:

(1) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

* * * * *

[FR Doc. 2019–24071 Filed 11–4–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 614

[Docket No. FTA–2019–000X]

RIN 2132–AB37

Transportation Infrastructure Management

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking rescinds an FTA regulation that cross-references the Management and Monitoring Systems regulation for the Federal Highway Administration (FHWA). The statutory basis for FHWA's regulation was rescinded by legislation in 2012.

DATES: This final rule is effective on November 5, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Montgomery, Office of Chief Counsel, (202) 366–1017 or *mark.montgomery@dot.gov.* Office hours are from 9 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document is viewable online through the Federal eRulemaking portal at *http://www.regulations.gov.* Retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days a year. An electronic copy of this document is available for download from the Office of the Federal Register home page at: *http://www.ofr.gov* and the Government Publishing Office web page at: *http://www.gpo.gov.*

Background

Part 614 of title 49, Code of Federal Regulations, cross-references the Management and Monitoring Systems regulation for the Federal Highway Administration (FHWA) at 23 CFR part 500. That part implements section 1034 of the Intermodal Surface Transportation Efficiency Act (Pub. L. 102–240) (ISTEA), which amended title 23, United States Code, by adding section 303 (Section 303). Section 303 required the Secretary of Transportation to promulgate regulations for State development, establishment, and implementation of systems for managing: Highway pavement of Federal-aid highways (PMS); bridges on and off Federal-aid highways (BMS); highway safety (SMS); traffic congestion (CMS); public transportation facilities and equipment (PTMS); intermodal transportation facilities and systems (IMS); and a system for monitoring highway and public transportation facilities and equipment (TMS). However, the National Highway System Designation Act of 1995 (NHS Act) amended section 303 to allow a State to elect not to implement, in whole or in part, any one or more of the management systems required under the section, except for CMS in transportation management areas (TMA), and removed the management system certification and sanction requirements. As a result, FTA and FHWA issued a final rule on December 19, 1996, 16 FR 67166–175, which reflected this State option and contained only minimum requirements for those systems that a State could choose to implement under the provisions of section 303.

Since the 1996 update to 23 CFR part 500, section 1519(b) of the Moving Ahead for Progress in the 21st Century (MAP–21) Act (Pub. L. 112–141) repealed section 303, which is the statutory basis for the regulation. Accordingly, FTA is issuing this final rule to rescind 49 CFR part 614, which cross-references 23 CFR part 500. This deregulatory action will not negatively impact safety, because congestion management, the only management system required under part 500, is still mandated by 23 CFR part 450.

Discussion of the Changes

This action rescinds 49 CFR part 614, which cross-references FHWA's Management and Monitoring Systems regulation at 23 CFR part 500, because the statutory basis for FHWA's regulation, 23 U.S.C. 303, was repealed by MAP–21. While 49 CFR part 614 cites 49 U.S.C. 5303–5305 as additional statutory authority, the requirements set forth in those statutes that overlap with the now-repealed 23 U.S.C. 303 are implemented through other FTA regulations. Of the four provisions of section 303 and 23 CFR part 500 that apply to FTA—IMS, CMS, PTMS, and TMS—only CMS is required explicitly by FTA statute, at 49 U.S.C. 5303(k)(3). Whereas 49 CFR 500.105 requires the metropolitan transportation planning process to include a CMS, the regulations at 23 CFR 450.322 (cross-referenced by 49 CFR part 613) also effectively implement the CMS requirement, which will continue to be imposed after this rule becomes effective.

Moreover, although not explicitly required by any FTA statute, current regulations cover management systems like IMS and PTMS. For example, the metropolitan and statewide planning processes require the integrated management and operation of the intermodal transportation system, similar to IMS, at 49 U.S.C. 5303(c)(2) and 5304(a)(2), and 49 CFR part 613 (cross-referencing 23 CFR part 450). Further, transit asset management incorporates much of the PTMS requirement at 49 U.S.C. 5326, and 49 CFR part 625. As a result, the requirements set forth in 49 CFR part 614 are either superfluous or duplicative.

Good Cause for Dispensing With Notice and Comment and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

Section 1519(b) of MAP–21 repealed section 23 U.S.C. 303 to remove the requirement that states implement the management systems enumerated in 23 CFR part 500. Because 49 CFR part 614 cross-references this regulation, FTA finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions (*i.e.,* the rule simply carries out the nondiscretionary statutory language found in MAP–21). The statutory language does not require regulatory interpretation to carry out its intent, and comments cannot alter the regulation given that the statute abrogated its purpose. Further, the delayed effective date is unnecessary because the removal of the management systems requirement was already made effective by MAP–21. Accordingly, FTA finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive notice and opportunity for comment and the delayed effective date.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866, 13563 and 13771 to improve regulation.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

Because FTA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. FTA evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA 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). This rule does not include a Federal mandate that may result in expenditures of $155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, 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 Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This E.O. applies because State and local governments would be directly affected by the regulation. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.505, Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research, for further information.

Paperwork Reduction Act

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FTA has analyzed this rule under the Paperwork Reduction Act and believes that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule effects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order 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 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at *https://www.govinfo.gov/content/pkg/FR-2012-05-10/pdf/2012-11309.pdf*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15,

2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at *http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf*).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular. FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

List of Subjects in 49 CFR Part 614

Grant programs—transportation, Mass transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.90:

K. Jane Williams,

Acting Administrator.

PART 614—[REMOVED AND RESERVED]

■ In consideration of the foregoing, and under the authority of Public Law 112–141, amend 49 CFR chapter VI by removing part 614.

[FR Doc. 2019–24156 Filed 11–4–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2018–0008; FXES11130900000C6–189–FF09E30000]

RIN 1018–BC02

Endangered and Threatened Wildlife and Plants; Removing Oenothera coloradensis (Colorado Butterfly Plant) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), remove the Colorado butterfly plant (*Oenothera coloradensis,* currently listed as *Gaura neomexicana* ssp. *coloradensis*) from the Federal List of Endangered and Threatened Plants (List) due to recovery. This determination is based on a thorough review of the best available scientific and commercial data, which indicate that the threats to the Colorado butterfly plant have been eliminated or reduced to the point that it has recovered, and that this plant is no longer likely to become endangered in the foreseeable future and, therefore, no longer meets the definition of a threatened species under the Endangered Species Act of 1973, as amended (Act). This final rule also removes the currently designated critical habitat for the Colorado butterfly plant.

DATES: This rule is effective December 5, 2019.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2018–0008. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2018–0008. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at our Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, below).

FOR FURTHER INFORMATION CONTACT: Tyler A. Abbott, Field Supervisor, telephone: 307–772–2374. Direct all questions or requests for additional information to: COLORADO BUTTERFLY PLANT QUESTIONS, U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On June 8, 2018, we published a proposed rule to remove Colorado butterfly plant from the List of Endangered and Threatened Plants (*i.e.,* to ''delist'' the species) (83 FR 26623). Please refer to that proposed rule for a detailed description of the Federal actions concerning this species that occurred prior to June 8, 2018.

Species Description and Life History

Detailed information regarding the Colorado butterfly plant's biology and life history can be found in the biological report for Colorado butterfly plant (USFWS 2017a, pp. 6 − 7). The biological report is an in-depth but not exhaustive review of the species' biology and threats, an evaluation of its biological status, and an assessment of the resources and conditions needed to maintain long-term viability. The report includes analyses of the species' viability in terms of its resiliency, redundancy, and representation (USFWS 2017a, entire). Resiliency is the ability of the species to maintain healthy populations that can withstand annual environmental variation and stochastic events. Redundancy is the ability of the species to maintain an adequate number and distribution of populations that can withstand catastrophic events. Representation is the ability of the species to adapt to changing environmental conditions through genetic, ecological, demographic, and behavioral diversity across its range. We summarize relevant information from the biological report below.

The Colorado butterfly plant is a short-lived perennial herb that is monocarpic or semelparous, meaning that it flowers once, sets seed, and then dies. Flowering plants may, on rare occasions, flower a second year or become vegetative the year after flowering (Floyd 1995, pp. 10–15, 32). Pollinators for related species of *Gaura* and *Colylophus* (Onagraceae, tribe Onagreae) consist of noctuid moths (*Noctuidae*) and halictid bees (*Lasioglossum;* Clinebell *et al.* 2004, p. 378); both moths and bees have been identified visiting Colorado butterfly plant flowers during annual censusing (USFWS 2016b, entire). Additionally, one study found that the Colorado butterfly plant does not exhibit a bimodal (day and night) pollination system that is seen in other *Gaura* species, since the majority of pollination occurs at night by noctuid moths (Krakos *et al.* 2013, entire).

The Colorado butterfly plant is self-compatible (Floyd 1995, p. 4), meaning that plants produce flowers that are capable of forming viable seed from pollen from the same plant. There are no apparent adaptations for dispersal; many seeds fall to the ground around parent plants (Floyd and Ranker 1998, p. 854), and, because the seed floats, others may be dispersed downstream. Livestock and native ungulates could provide an important dispersal mechanism as well, through ingestion of the seeds (USFWS 2012, p. 27). Populations of this species show evidence of a seedbank, an adaptation that enables the species to take advantage of favorable growing seasons, particularly in flood-prone areas (Holzel and Otte 2004, p. 279).

The number of individuals in a population of Colorado butterfly plants appears to be influenced by rates of seedling establishment and survival of vegetative rosettes to reproductive maturity. These factors may be influenced by summer precipitation (Floyd and Ranker 1998, p. 858; Fertig

2000, p. 13). More recent evaluation suggests that the combination of cool and moist spring months is important in germination, and that germination levels influence the outcome of flowering plant population census in subsequent years. Additionally, summer conditions, and temperature in particular, appear to be an important mortality factor rather than influencing germination (Laursen and Heidel 2003, p. 6). Differences in soil moisture and vegetation cover may also influence recruitment success (Munk *et al.* 2002, p. 123).

The vegetative rosettes within a population may provide an important and particularly resilient stage of the life history of this species. Individual vegetative rosettes appear to be capable of surviving adverse stochastic events such as flooding (Mountain West Environmental Services 1985, pp. 2–3) and adverse climatic years when new seedling establishment is low. Therefore, episodic establishment of large seedling recruitment classes may be important for the long-term growth, replenishment, and survival of populations (Floyd and Ranker 1998, entire).

Taxonomy

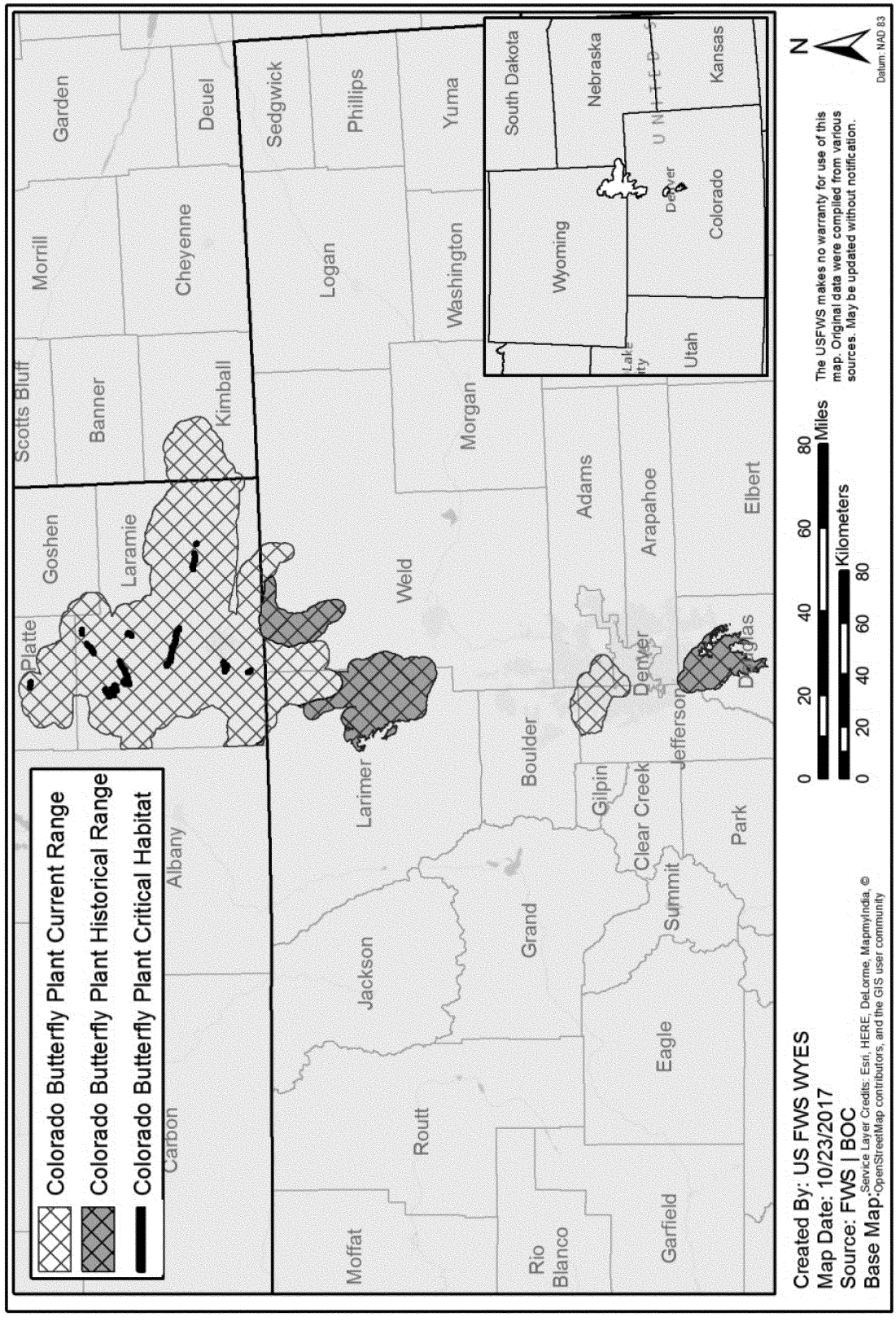
The Colorado butterfly plant, a member of the evening primrose family (Onagraceae), was listed as *Gaura neomexicana* ssp. c*oloradensis* in 2000 (65 FR 62302; October 18, 2000). Molecular studies by Hoggard *et al.* (2004, p. 143) and Levin *et al.* (2004, pp. 151–152) and subsequent revisions of the classification of the family Onagraceae transferred the taxon previously known as *Gaura neomexicana* Wooton to *Oenothera* as *Oenothera coloradensis* ssp. *neomexicana* (Wooton) W.L. Wagner & Hoch (Wagner *et al.* 2007, p. 211). More recent analyses showed that there are no infraspecific entities (any taxa below the rank of species) within the taxon; the listed entity is now recognized as *Oenothera coloradensis* (Wagner *et al.* 2013, p. 67). A more detailed assessment of the taxonomy of the Colorado butterfly plant is available in the species biological report (USFWS 2017a, pp. 4—6). The taxonomic and nomenclatural changes do not alter the description, range, or threat status of the listed entity. Throughout this final rule, we will use the current scientific name and rank, *Oenothera coloradensis,* for the Colorado butterfly plant.

Species Abundance, Habitat, and Distribution

The Colorado butterfly plant is a regional endemic riparian species known from 34 12-digit hydrologic unit code (HUC) watersheds (28 extant and 6 extirpated), found from Boulder, Douglas, Larimer, and Weld Counties in Colorado; Laramie and Platte Counties in Wyoming; and western Kimball County in Nebraska (see the figure, below). Prior to 1984, few extensive searches for the plant had been conducted, and data taken from herbarium specimens were the primary basis of understanding the extent of the species' historical distribution. At that time, the plant was known from a few historical and presumably extirpated locations in southeastern Wyoming and several locations in northern Colorado, as well as from three extant occurrences in Laramie County in Wyoming and Weld County in Colorado. Prior to listing, extensive surveys were conducted in 1998, to document the status of the known occurrences, and all still contained Colorado butterfly plants (Fertig 1998a, entire).

BILLING CODE 4333–15–P

Figure of historical and current range (and the seven units of designated critical habitat entirely within Wyoming) of Colorado butterfly plant in Colorado, Wyoming, and Nebraska. All populations are generalized to 12-digit HUC watersheds and buffered by 3.2 kilometers (2 miles).



BILLING CODE 4333–15–C

Habitat Description

The Colorado butterfly plant occurs on subirrigated (water reaches plant root zone from below the soil surface), alluvial soils derived from conglomerates, sandstones, and tuffaceous (light, porous rock formed by consolidation of volcanic ash) mudstones and siltstones of the Tertiary White River, Arikaree, and Oglalla Formations (Love and Christiansen 1985 in Fertig 2000, p. 6) on level or slightly sloping floodplains and drainage bottoms at elevations of 1,524–1,951

meters (m) (5,000–6,400 feet (ft)). Populations are typically found in habitats created and maintained by streams active within their floodplains, with vegetation that is relatively open and not overly dense or overgrown (65 FR 62302; October 18, 2000). Populations occur in a range of ecological settings, including streamside, outside of the stream channel but within the floodplain, and spring-fed wet meadows. The plant is often found in, but not restricted to, early- to mid-succession riparian habitat. Historically, flooding was probably the main cause of disturbances in the plant's habitat, although wildfire and grazing by native herbivores also may have been important. Although flowering and fruiting stems may exhibit increased dieback because of these events, vegetative rosettes appear to be little affected (Mountain West Environmental Services 1985, pp. 2–3). It commonly occurs in communities dominated by nonnative and disturbance-tolerant native species, including creeping bentgrass (*Agrostis stolonifera*), Kentucky bluegrass (*Poa pratensis*), American licorice (*Glycyrrhiza lepidota*), Flodman's thistle (*Cirsium flodmanii*), curlytop gumweed (*Grindelia squarrosa*), and smooth scouring rush (*Equisetum laevigatum*). Its habitat on Warren Air Force Base (AFB) includes wet meadow zones dominated by switchgrass (*Panicum virgatum*), mat muhly (*Muhlenbergia richardsonis*), little bluestem (*Schizachyrium scoparium*), prairie cordgrass (*Spartina pectinata*), and other native grasses. All of these habitat types are usually intermediate in moisture, ranging from wet, streamside communities dominated by sedges, rushes, and cattails to dry, upland prairie habitats (Fertig 1998a, pp. 2–4).

Typically, Colorado butterfly plant habitat is open, without dense or woody vegetation. The establishment and survival of seedlings appears to be enhanced at sites where tall and dense vegetation has been removed by some form of disturbance. In the absence of occasional disturbance, the plant's habitat can become choked by dense growth of willows, grasses, and exotic plants (Fertig 1996, p. 12). This prevents new seedlings from becoming established and replacing plants that have died (Fertig 1996, pp. 12–14).

For the purposes of this analysis, we consider all occurrences of the Colorado butterfly plant within the same 12-digit HUC watershed to be one population. Populations defined this way typically consist of numerous subpopulations, each with dozens to hundreds of flowering stems and rosettes. These subpopulations are often widely scattered, which contributes to this species' resiliency and redundancy. There are no data (*e.g.,* genetic relatedness) available to more precisely define populations, and although distance of 1 kilometer (km) (0.6 miles (mi)) or greater may exceed the distance traveled by pollinators, it is possible that seeds may disperse over much greater distances (Heidel 2016, pers. comm.). Therefore, because these gaps are probably too small to prevent the dispersal of pollinators and/or seeds between subpopulations, colonies along the same stream reach (12-digit HUC) should be considered part of the same population. This approach to grouping populations varies from the characterization of populations in both the listing decision (65 FR 62302; October 18, 2000) and critical habitat designation (70 FR 1940; January 11, 2005), where populations were defined by landowner and/or proximity within a drainage. We find organizing populations based on 12-digit HUCs to more accurately describe components of population ecology (genetic exchange within a geographic area), and stressors affecting the species tend to vary by watershed. Because of this new organization of population structure, some populations considered distinct and separate during the 2000 listing decision are now combined and vice versa, although many populations are the same in this final rule as they were presented in the 2000 listing rule.

Population Abundance and Trends

The Colorado butterfly plant occurred historically and persists in various ecological settings described above under Habitat Description, including wet meadows, stream channels, stream floodplains, and spring-fed wetlands. A detailed summary of the status of the species between 1979 and 2016 is provided in the species' biological report (USFWS 2017a, pp. 13–22).

In 1998 and 1999, in preparation for our listing determination for the species, the rangewide census of flowering individuals was estimated at 47,300 to 50,300, with the majority of these occurring in Wyoming (Fertig 1998a, p. 5; Fertig 2000, pp. 8–13). However, a population was discovered in Colorado in 2005 that had a peak census of 26,000 plants in 2011, bringing the total rangewide population to approximately 73,300 to 76,300 plants over time. In 2016, another population was discovered in a different 12-digit HUC upstream of known populations on Horse Creek in Laramie County, Wyoming, with only 17 individuals, although the area had just been hayed and was likely an incomplete representation of the total number of plants in this population (USFWS 2016b, entire). Discovery of new populations suggests this species is faring better than presumed at the time of listing.

Average numbers may be a more appropriate way to represent populations than the minimum and maximum values, although all provide insight into the population's resiliency, or the ability to withstand stochastic events. The number of reproductive individuals in a population is somewhat driven by environmental factors and is shown to vary considerably, so understanding the variability in the number of individuals present in any given year is meaningful in assessing population resiliency. Population numbers have fluctuated five-fold over the course of the longest-running monitoring study (28 years) conducted on Warren AFB. There, the population peaked at over 11,000 flowering plants in 1999 and 2011, making it one of the largest populations rangewide, and then dropped to 1,916 plants in 2008 (Heidel *et al.* 2016, p. 1). The Warren AFB population numbers provide some indication of how population numbers can vary in landscapes not managed for agricultural purposes, and it is likely that numbers vary even more dramatically on managed landscapes. If this fluctuation was applied to the rangewide population estimates above, then total rangewide numbers for average years might be less than 50 percent of rangewide estimates in favorable years (Handwerk 2016, pers. comm.; Heidel 2016, pers. comm.).

The final listing rule (65 FR 62302; October 18, 2000) defined large populations as those containing more than 3,000 reproductive individuals, moderate containing 500 to 2,500 reproductive individuals, and small having fewer than 200 reproductive individuals (no populations contained 200 to 500 plants or 2,500 to 3,000 plants), and so characterized the species as being represented by 10 large stable or increasing populations, 4 moderate extant but declining populations, 3 likely small populations, and 9 likely extirpated populations. However, after monitoring roughly half the known populations annually for the past 14 years, we understand that population size can fluctuate significantly from year to year; therefore, population size in any given year is not a good indicator of resiliency. Individual populations exhibit substantial stochasticity, with localized extirpation and recolonization based on disturbances. Therefore, our estimates of resiliency are now based on

averages of population censuses over multiple years and trends of populations in response to management and stressors. Resiliency is based on the average number of reproductive individuals within the survey area (generally having more than 100 reproductive individuals most years indicates high resiliency, between 50 and 100 is moderate, and under 50 is low), trends in population numbers where available, and response to stochastic events. Based on this, we now have 15 high resiliency populations, 2 moderate resiliency populations, 6 low resiliency populations, 2 populations with unknown resiliency, and records of 6 extirpated populations. Additionally, there are three introduced populations that do not contribute to recovery and were not assessed for resiliency, representation, or redundancy.

Colorado

The Colorado butterfly plant is known to occur in Adams, Boulder, Douglas, Jefferson, Larimer, and Weld Counties in northern Colorado, spanning 12 12-digit HUC watersheds (see figure above). Six historical occurrences have not been documented since 1984, and are presumed extirpated.

The majority of Colorado butterfly plants in Colorado are located on lands managed by the City of Fort Collins Natural Areas Department (CFCNAD) in Weld and Larimer Counties. The plants are distributed among three distinct habitats on either side of Interstate 25 and have numbered between 3 to more than 26,000 reproductive individuals. These areas are being managed to maintain suitable habitat for the species (CFCNAD 2008, p. 1; CFCNAD 2010, p. 1; CFCNAD 2011a, entire; CFCNAD 2011b, entire; CFCNAD 2014, entire). Annual census information on flowering individuals at the Meadow Springs Ranch in Weld County indicates that the large fluctuations in population numbers are actually around a stable mean (744 flowering plant average, median of 140, range of 45–2,719 flowering plants). Other populations in Colorado have not been routinely monitored; consequently, no trend information is available (USFWS 2016b, entire). In summary, the species is represented in Colorado by two high resiliency populations that contribute to species redundancy and three low resiliency populations with minimal contribution to species redundancy.

Nebraska

Populations of the Colorado butterfly plant in Nebraska are considered at the edge of the species' range (65 FR 62302, October 18, 2000). In 1985, monitoring along Lodgepole Creek in extreme eastern Wyoming and Kimball County, Nebraska, found 2,065 individual plants in six subpopulations. Surveys conducted in 1985, along Lodgepole Creek near the Nebraska/Wyoming border in Kimball County, found just over 2,000 flowering plants (Rabbe 2016, pers. comm). A later survey in 1992 found two populations of Colorado butterfly plant: one population (547 plants) along Lodgepole Creek and one population (43 plants) at Oliver Reservoir State Recreation Area (SRA) in the southwest panhandle of Nebraska in Kimball County west of the city of Kimball, Nebraska (Fertig 2000a, p. 12). Survey results from 2004 suggested the species was extirpated from the State (Fritz 2004, pers. comm.). However, a 2008 survey within three 12-digit HUC watersheds, along 13 km (8 mi) of historically occupied habitat and the Oliver Reservoir SRA, located 12 plants in four locations on private lands along Lodgepole Creek: 5 plants in areas where the species had been located before and 7 plants in areas newly watered by a landowner piping water into Lodgepole Creek from a cattle stock tank. No plants were found at the Oliver Reservoir SRA (Wooten 2008, p. 4). These areas have not been surveyed since 2008. Outside of these occurrences, no other populations of the species are known to occur in Nebraska (Rabbe 2016, pers. comm.). In summary, due to the low abundance, dewatering, over-grazing, and poor habitat quality, the species is represented in Nebraska by three populations with low resiliency that provide minimal contribution to species redundancy.

Wyoming

Extant populations of Colorado butterfly plant in Wyoming occur throughout most of Laramie County and extend northward into Platte County (USFWS 2012, pp. 11–21), spanning 17 12-digit HUC watersheds. Over 90 percent of known occurrences in Wyoming are on private lands, with parts of two occurrences on State school trust lands, all of a third occurrence on State lands, and one occurrence on Federal lands. Populations in Wyoming that are found partly or fully on State school trust lands are managed for agricultural uses.

The population on Federal lands occurs on Warren AFB located adjacent to Cheyenne provides information on species trends as it may have occurred prior to human settlement of the area (with wild grazers and natural streamflow), and represents the level of hydrological complexity of three different sizes of streams. The highest census numbers at Warren AFB totaled over 11,000 plants in 1998 and 2011, and the mean census numbers for all other years have remained at or above 50 percent of that peak, based on 1988–2016 numbers (Heidel *et al.* 2016, pp. 11–14). In terms of genetic representation, a study conducted on Colorado butterfly plants occupying three drainages at Warren AFB found that one of the drainages was genetically unique and more diverse than the other two drainages (Floyd 1995, pp. 73–81), but that overall population-level genetic diversity was low. Another study at Warren AFB found that plants in one of the drainages contained unique alleles, sharing genetic composition with only a small number of individuals from the second and no individuals of the third drainage, indicating fine-scale genetic variability within that portion of the species' range (Tuthill and Brown 2003, p. 251). Assuming similar genetic structure across the species' range, this suggests a high degree of genetic representation at the species level. This genetic information, however, does not provide sufficient strength in terms of sample size in discerning populations from each other.

Since 2004, the Service has had agreements with 11 private landowners within six 12-digit HUC watersheds in Laramie County, Wyoming, and one watershed in Weld County, Colorado (described in detail under Conservation Efforts, below), to conduct annual monitoring of the Colorado butterfly plant. We also provide management recommendations to help landowners maintain habitat for the species. Many of the landowners graze cattle or horses where the species occurs; others use the areas for haying operations. For example, one population was heavily grazed for over a decade, leading to counts of fewer than 30 reproductive individuals for several years, but when the grazing pressure was relieved, the population rebounded within 1 year to more than 600 reproductive individuals (USFWS 2016b, entire). This outcome may indicate that either a robust seedbank was present or vegetative rosettes avoided the intense grazing pressure and bolted after grazing diminished. The total number of plants counted in Wyoming under these agreements between 2004 and 2018 has varied from approximately 1,000 to over 21,000 reproductive individuals. Combining annual census numbers from all monitored populations in Wyoming, we have observed small to extreme population fluctuations, and some populations jumped from having few or no flowering plants in one year to

having hundreds or even thousands the following year (USFWS 2012, pp. 11–21; USFWS 2016, entire). Wyoming is represented by 13 highly resilient populations that contribute to species redundancy, 2 moderately resilient populations that contribute to species redundancy, and 2 populations with unknown resiliency and redundancy due to lack of information.

Conservation Efforts

The listing decision (65 FR 62302, October 18, 2000, p. 62308) stated that ''[i]n order for a population to sustain itself, there must be enough reproducing individuals and sufficient habitat to ensure survival of the population. It is not known if the scattered populations [of the Colorado butterfly plant] contain sufficient individuals and diversity to ensure their continued existence over the long term.'' Today, we understand that, regarding ecological representation, the species is characterized by having at least one population within each ecological setting and within all but the southern-most portions of the historical range. Furthermore, most populations contain individuals in more than one ecological setting, such as individuals along the creek bank and individuals outside of the creek bank and in the floodplain of the creek. The Service has not typically measured the acreage of suitable habitat at each population for a number of reasons, namely because we found the number of individuals at the site to be more informative of the population's status and because of the wide variation in habitat types occupied by the species.

The Service has worked with partners to protect existing populations. Much of this work has been accomplished through voluntary cooperative agreements. For example, beginning in 2004, the Service has entered into 11 wildlife extension agreements (WEAs) with private landowners, representing six of the 12-digit HUCs, to manage riparian habitat for Colorado butterfly plant (70 FR 1940; January 11, 2005). These 15-year WEAs cover a total of 1,038 hectares (ha) (2,564 acres (ac)) of the species' habitat along 59 km (37 mi) of stream. These agreements represent approximately one-third of the known populations of Colorado butterfly plant in Wyoming and Colorado, including some of the largest populations on private lands. All of the landowners have agreed to the following:

(1) Allow Service representatives or their designee access to the property for monitoring or fence installation;

(2) Coordinate hay cutting activities in areas managed primarily for hay production to consider the Colorado butterfly plant's seed production needs;

(3) Prevent application of herbicides closer than 30.5 m (100 ft) from known subpopulations of the Colorado butterfly plant; and

(4) Manage livestock grazing activities in conjunction with conservation needs of the Colorado butterfly plant.

One of the landowners signed a 10-year agreement instead of a 15-year agreement that was renewed for an additional 10 years in 2015. The remaining agreements expire in late 2019. All landowners whose properties will be included in the post-delisting monitoring program when this final rule goes into effect (see **DATES**, above) are amenable to creating new agreements—once the existing agreements expire this year—that will last the duration of the post-delisting monitoring.

One of the benefits of the WEAs for both the Service and private landowners is that we can review the population numbers annually and together develop management recommendations to improve growing conditions for the species. Populations occurring within designated critical habitat (see figure, above) have not been surveyed since the critical habitat determination surveying in 2004, and their trends, threats, and viabilities are uncertain. However, the Wyoming Ecological Services Field Office has not consulted under the Act with private landowners managing these parcels on any projects that may adversely affect the critical habitat for this species. Additionally, we reviewed aerial imagery of the critical habitat units and found only two minimal changes between 2004 and 2015 (reflecting habitat conditions at the time of designation and the most recent aerial imagery available) throughout all critical habitat units; these changes affect only a few acres of designated critical habitat (USFWS 2017b, entire). Consequently, we determine that activities occurring on critical habitat are likely the same as they were at the time of designation. Furthermore, because many of the private lands included in the critical habitat designation are adjacent to lands under WEAs, we determine that the populations occurring within designated critical habitat are likely stable, and fluctuating similarly to populations on lands that we monitor under WEAs. We have no reason to believe that populations occurring on designated critical habitat are responding to stressors differently than those populations we monitor. Therefore, populations throughout the species' range on private, local, and Federal lands either have been observed to be, or are highly likely to be, fluctuating around a stable population size.

The Service and the U.S. Air Force signed a memorandum of agreement (MOA) on January 18, 1982 (updated in 1999 with the pending listing decision, and updated in 2004 with the pending critical habitat decision), to facilitate the preservation, conservation, and management of the Colorado butterfly plant (USFWS 1982, entire; USFWS 1999, entire; USFWS 2004, entire). In 2004, Warren AFB included a conservation and management plan for the species in its integrated natural resources management plan (CNHP 2004, entire). Through these plans, the Service partners with the U.S. Air Force and Wyoming Natural Diversity Database to monitor and protect the population of the Colorado butterfly plant on the Warren AFB. Conservation actions include annual monitoring; nonnative, invasive species control and eradication; and maintenance of appropriate floodplain characteristics for the species. Based on 29 years of monitoring and management, the population of the Colorado butterfly plant on the Warren AFB is doing well, with some areas declining while others are increasing (Heidel *et al.* 2016, entire).

Three populations in Larimer and Weld Counties, Colorado, occur on properties owned by the City of Fort Collins, and two are among the largest across the species' range. The City of Fort Collins developed a 10-year master plan for the Natural Areas Department in 2014, which provides a framework for the conservation and preservation of natural areas, including the populations of the Colorado butterfly plant. The master plan prescribes conservation actions that allow for the persistence of the Colorado butterfly plant on the landscape (CFCNAD 2016a, entire), including prescribed burns to eliminate competition, managed grazing to maintain early successional habitat, and improved security of water flow to the species' habitat to ensure the necessary subirrigation is available for populations of Colorado butterfly plant.

Populations of Colorado butterfly plant are not known to occur on lands managed by the Bureau of Land Management (BLM) at this time, although there is potential for populations to be discovered on BLM lands in the future. Because of this possibility, the Service and BLM in Wyoming have developed conservation measures under a Statewide programmatic consultation under section 7 of the Act for the Colorado butterfly plant. These conservation

measures are incorporated into BLM's 2008 Record of Decision and Approved Rawlins Resource Management Plan (RMP; BLM 2008, entire) and include, but are not limited to: (1) Buffering individuals and populations by 800 m (0.5 mi); (2) implementing standards for healthy rangelands and guidelines for livestock grazing management for the public lands administered by BLM in the State of Wyoming; (3) limiting the number of grazing animals within the permit area; and (4) protecting surface water through prohibiting surface development in the following areas: within 400 m (0.25 mi) of the North Platte River; within 152 m (500 ft) of live streams, lakes, reservoirs, and canals and associated riparian habitat; and within 152 m (500 ft) of water wells, springs, or artesian and flowing wells (BLM 2005, pp. 4–2 through 4–4). The newly discovered population on Wild Horse Creek (WY–23) occurs within the agreement area that BLM developed with the landowners, and so the conservation measures included in the Rawlins RMP are applied to this population.

In summary, these agreements and plans have provided useful data, facilitated good management of nine of the largest and most resilient populations, and resulted in stable or increasing population trends. Because of the information we obtained through these agreements and plans, we are able to understand the resiliency of individual plants and populations, the representation of the species within its ecological settings, and the redundancy of the plant population numbers and potential for connectivity.

Summary of Changes From the Proposed Rule

We have made updates to our discussions of the species' population status (including 2018 information) and factors affecting the species, based on comments submitted by the public and information provided to us by peer reviewers, as discussed later in this final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Determining whether the status of a species has improved to the point that it can be downlisted (*i.e.,* reclassified from endangered to threatened) or delisted requires consideration of whether the species is an endangered species or threatened species because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered species or threatened species, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the significant portion of its range phrase refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. We consider ''foreseeable future'' as that period of time within which a reliable prediction can be reasonably relied upon in making a determination about the future conservation status of a species (DOI Solicitor M–37021; January 16, 2009). We consider 15 to 20 years to be a reasonable period of time within which reliable predictions can be made for the Colorado butterfly plant. This time period includes at least five generations of the species, coincides with management timeframes in renewed WEAs, and aligns with the timeframes for predictions regarding municipal development and growth in the area. For the purposes of this analysis, we first evaluate the status of the species throughout all of its range, then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and we attempt to determine how significant a threat it is. If the threat is significant it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as an endangered species or a threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors individually or cumulatively are operative threats that act on the species to the point that the species meets the definition of an endangered species or threatened species under the Act.

The Colorado butterfly plant is federally listed as threatened. Below, we present a summary of threats affecting the species and its habitats in the past, present, and predicted into the future. A detailed evaluation of factors affecting the species at the time of listing can be found in the listing determination (65 FR 62302; October 18, 2000) and designation of critical habitat (70 FR 1940; January 11, 2005). An evaluation of factors affecting the species after 2005 can be found in the 2012 5-year review (USFWS 2012, entire). The primary threats to the species identified at the time of listing include overgrazing by cattle or horses, haying or mowing at times of the year incompatible with Colorado butterfly plant reproduction, habitat degradation resulting from vegetation succession or urbanization of the habitat, habitat conversion to cropland or subdivision, water development, herbicide spraying, and competition with exotic plants (65 FR 62302; October 18, 2000). Since the time of listing, oil and gas development and climate change have become potential threats to this species and are analyzed under Factor A and Factor E, respectively, below. The 2012 5-year review evaluated all potential threats to this species and found that all threats presented at a low overall level to the species (USFWS 2012, Appendix A) and

that the species had a high recovery potential (USFWS 2012, p. 39). In 2016, a revised 5-year review did not recommend delisting, but recommended a formal evaluation of whether the species needed to remain listed (USFWS 2016, p. 40). As a result, we completed a biological report the following year, which concluded that the species had moderate to high viability based on its resiliency, redundancy, and representation (USFWS 2017a, p. 33).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Residential, Urban, and Energy Development

At the time of listing (65 FR 62302; October 18, 2000), residential and urban development around the cities of Cheyenne and Fort Collins were identified as past causes of habitat conversion and habitat loss to the Colorado butterfly plant; these types of development were not a concern in Nebraska at the time of listing nor are they now. Although difficult to quantify because land conversion was not tracked during the settlement of the West, likely a few hundred acres of formerly suitable habitat were converted to residential and urban sites, contributing to loss of habitat (Fertig 1994, p. 38; Fertig 2000a, pp. 16–17). Much of the species' range occurs along the northern Front Range of the Rocky Mountains in Colorado and Wyoming, which has experienced dramatic growth in the recent past and is predicted to grow considerably in the future (Regional Plan Association 2016, entire), particularly in Larimer and Weld Counties in Colorado (University of Colorado Boulder 2016, pp. 119–120). The demand that urban development places on water resources also has the ability to dewater the streams and lower groundwater levels required by the species to maintain self-sustaining populations, and is explored below.

The two large populations of the Colorado butterfly plant in Larimer and Weld Counties, Colorado, occur on lands managed as open space by CFCNAD, and are not directly subject to residential or urban development. Consequently, despite projected increases in human density and urban development along the northern Front Range, these lands are managed to allow for the persistence of these populations, with managed grazing or burning (CFCNAD 2016b, entire). CFCNAD does not own all mineral rights on these lands; therefore, sensitive areas within these boundaries may be impacted by mineral development. However, in light of this potential threat, CFCNAD completed a planning process in which they highlighted areas to be avoided by mineral development (The Nature Conservancy 2013, entire). While oil and gas development has increased in northern Colorado and southeastern Wyoming since the time of listing, no oil or gas wells have been proposed or likely will be proposed in areas that will directly or indirectly impact populations of the Colorado butterfly plant in Colorado or in Wyoming, particularly due to the species' occurrence in riparian and wetland habitats. Because the plant occurs in riparian and wetland habitats that routinely flood, it is likely that oil and gas wells will be sited outside of population boundaries. While there is potential for indirect effects through spills or sedimentation, we have no specific information about those effects on the species to date.

According to publicly available information, there are no current proposals for urban or residential development on lands containing populations of Colorado butterfly plant in Wyoming. Monitoring of lands under agreement (CFCNAD, WEAs, and Warren AFB) has also shown that neither urbanization nor conversion to intensive agricultural activities has occurred as predicted in the final listing rule (65 FR 62302, October 18, 2000; USFWS 2012, pp. 11–22; USFWS 2016b, entire). Monitoring data over the past 29 years at WAFB have shown that populations remain stable without being managed for agricultural purposes, although numbers of reproductive individuals fluctuate during any given year (Heidel *et al.* 2016, pp. 14–18). Since the time of listing, the Service has received few requests for consultation under section 7 of the Act for projects that may adversely affect this species. Informal consultations have been limited to grazing, power lines, pipelines, road development, and drainage crossing projects, and avoidance and minimization of potential impacts has been readily achieved (USFWS 2017c, entire).

Furthermore, chapters 3 and 4 of the Laramie County Land Use Regulations address floodplain management and require specific provisions and permits for construction within floodplains (Laramie County 2011, pp. 165–185), which encompass all Colorado butterfly plant habitat within the county; therefore, these regulations extend some level of protection to the species and its habitat. These regulations are in place to ''promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions'' (Laramie County 2011, p. 165), and are a common-sense approach to protecting many resources, including the Colorado butterfly plant and its habitat, by limiting development in the floodplains. These regulations are discussed in detail under Factor D, below.

The threats of residential and urban development, once considered significant threats to the Colorado butterfly plant, have been largely avoided because most development has occurred outside of the habitat in which this species occurs. Annual monitoring conducted by the Service since 2004 indicates that populations are stable and unaffected by any development that has occurred within the species' range. While human population growth and development are predicted for the Front Range of the Rocky Mountains in Colorado into the future, these areas are outside of the species' occupied habitat, and we do not anticipate development in the protected areas under management of CFCNAD, and do not anticipate development due to continued restrictions against development within the floodplain. Additionally, increases in oil and gas development in northern Colorado and southeastern Wyoming have not directly or indirectly impacted populations of the Colorado butterfly plant and are not likely to do so in the future. Current ownership and management by CFCNAD and Warren AFB of lands containing a majority of large populations of the Colorado butterfly plant protect the species from current and future impacts due to residential, urban, and energy development.

Agricultural Practices

At the time of listing (65 FR 62302; October 18, 2000), conversion of grassland to farmlands, mowing grasslands, and grazing were considered threats to the Colorado butterfly plant. Prior to listing, the conversion of moist, native grasslands to commercial croplands was widespread throughout much of southeastern Wyoming and northeastern Colorado (Compton and Hugie 1993, p. 22), as well as in Nebraska. However, conversion from native grassland to cropland has slowed throughout the species' range since the time of listing, with no lands converted in Laramie County and just 12 ha (30 ac) converted in Platte County between 2011 and 2012 (FSA 2013, entire).

Mowing for hay production was identified as a threat at the time of listing, if conducted at sensitive times of year for Colorado butterfly plant (prior to seed maturation) (Fertig 1994, p. 40; USFWS 1997, p. 8). However,

monitoring by the Service over the past 13 years indicates that mowing prior to seed maturation occurs infrequently. Even in areas where early season mowing has occurred, annual monitoring has shown high numbers of reproductive plants present in subsequent years, suggesting that mowing for hay production is not a threat to the species (USFWS 2016b, entire).

The agricultural practices of grazing and herbicide application threatened the Colorado butterfly plant at the time of listing. However, since then, the Service has made and continues to make recommendations to cooperating landowners on agricultural management that fosters resiliency in populations of the species. We determined that these measures have decreased the severity of these stressors. We also anticipate that landowners will continue their current agricultural practices into the future, based on the data we have collected from WEAs (USFWS 2016b, entire) and analysis of aerial imagery of designated critical habitat (USFWS 2017b, entire). Through these agreements, we also learned that the species is highly adapted to withstand stochastic events. Therefore, we do not rely on the implementation of the WEAs to ensure that the species remains highly resilient because the WEAs simply provided a mechanism for the Service to gain information to better understand its viability. Because of this information regarding resiliency, redundancy, and representation, we believe the plant will continue to thrive when the species is delisted and the protections of the Act are removed. Grazing is further explored under Factor C, below, and herbicide spraying is further explored under Factor E, below.

Water Management

At the time of listing (65 FR 62302; October 18, 2000), water management (actions that move water to croplands, such as irrigation canals, diversions, and center pivot irrigation development) was considered a threat that would remove moisture from Colorado butterfly plant habitat. The management of water resources for livestock production and domestic and commercial human consumption, coupled with increasing conversion of lands for agricultural production, often led to channelization and isolation of water resources; changes in seasonality of flow; and fragmentation, realignment, and reduction of riparian and moist lowland habitat (Compton and Hugie 1993, p. 22). All of these actions could negatively impact suitable habitat for the species.

Dewatering portions of Lodgepole Creek in Kimball County, Nebraska, has led to the extirpation of some of the species' known historical populations there, and low likelihood of long-term resiliency for the two extant populations last monitored in 2008 (Rabbe 2016, pers. comm.). Extant populations in Nebraska continue to be threatened by dewatering and overgrazing on private land. However, when water was reintroduced to formerly occupied habitat after being absent for more than 10 years, a population was rediscovered (Wooten 2008, p. 4). While rediscovery of this population indicates persistence of a viable seedbank for at least 10 years, numbers of plants within the population declined from over 600 plants (Fertig 2000a, p. 12) to 12 plants (Wooten 2008, p. 4), and the application of water that allowed plants to grow was temporary, which suggests the population has a low likelihood of long-term resiliency.

In 2015, the Colorado Water Conservation Board on behalf of CFCNAD filed an instream flow right on Graves Creek, the stream that feeds the population of Colorado butterfly plants in Soapstone Prairie (CFCNAD 2016b, entire). This instream flow right was appropriated on January 26, 2015, and allows for 0.17 cubic feet per second, year-round, which will protect and maintain subirrigation of this large and important population for CFCNAD through ensuring adequate water availability to the species throughout the year.

The entire range of the Colorado butterfly plant occurs within the Platte River Basin. Water usage in the Platte River system is managed collaboratively by the States of Colorado, Wyoming, and Nebraska, and the Department of the Interior, through the Platte River Recovery Implementation Program (PRRIP; PRRIP 2019). The PRRIP, which has been in existence since 1997, provides a mechanism for existing and new water users and water-development activities in the Platte River Basin to operate in regulatory compliance with the Act regarding potential impacts to the five Platte River ''target species'' in Nebraska: whooping crane (*Grus americana*), interior least tern (*Sterna* (*Sternula*) *antillarum*), northern Great Plains population of piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*), and western prairie fringed orchid (*Platanthera praeclara*). Because the PRRIP ensures that shortages to the target flows in the central Platte River will be substantially reduced by keeping water within the basin more consistently throughout the year, the hydrological component of habitat for the Colorado butterfly plant will be maintained at higher and more consistent levels than it was prior to the listing of the Colorado butterfly plant. The PRRIP also has an adaptive management plan to improve management decisions based on information learned. The implementation of the PRRIP ensures that more water will stay within the Platte River Basin and be available for populations of the Colorado butterfly plant.

In summary, water management can directly and indirectly impact the Colorado butterfly plant. While management of water resources has negatively impacted the species on a localized scale in the past, there is no indication that water management throughout the majority of the species' range poses a current threat to the species. Programs and policies currently in place, such as the PRRIP and Graves Creek instream flow right, provide substantial assurances that the hydrological component of currently occupied habitat will remain secure and available to populations of Colorado butterfly plant over the long term.

Natural Succession and Competition With Nonnative, Invasive Species

In the absence of periodic disturbance, natural succession of the plant community in areas occupied by the Colorado butterfly plant moves from open habitats to dense coverage of grasses and forbs, and then to willows and other woody species. The semi-open habitats preferred by this species can become choked by tall and dense growth of willows; grasses; and nonnative, invasive species (Fertig 1994, p. 19; Fertig 2000a, p. 17). Natural disturbances such as flooding, fire, and native ungulate grazing were sufficient in the past to create favorable habitat conditions for the species. However, the natural flooding regime within the species' floodplain habitat has been altered by construction of flood control structures and by irrigation and channelization practices (Compton and Hugie 1993, p. 23; Fertig 1994, pp. 39–40). Consequently, the species relies on an altered flood regime and other sources of disturbance to maintain its habitat.

In the absence of natural disturbances today, managed disturbance may be necessary to maintain and create areas of suitable habitat (Fertig 1994, p. 22; Fertig 1996, pp. 12–14; Fertig 2000a, p. 15). However, monitoring of the population at Warren AFB indicates that populations can persist without natural disturbances such as fire and flooding through natural dieback of woody vegetation and native ungulate grazing

(Heidel *et al.* 2016, pp. 2–5). Additionally, some Federal programs, such as those administered by the U.S. Department of Agriculture's Natural Resources Conservation Service, focus on enhancing or protecting riparian areas by increasing vegetation cover and pushing the habitat into later successional stages, which removes the types of disturbance the Colorado butterfly plant needs (65 FR 62302; October 18, 2000, p. 62307). However, these programs are implemented in only a small portion of the species' range. The Service learned from monitoring the 11 WEA properties that the typical approach of managing for livestock grazing, coupled with an altered flood regime, appears to provide the correct timing and intensity of disturbance to maintain suitable habitat for the species (USFWS 2012, pp. 9–21; USFWS 2016b, entire). There has been no noticeable change in general management practices (*e.g.,* mowing and grazing) or change in the natural succession rate in either the WEA properties or the designated critical habitat since the agreements were signed or the critical habitat was designated, and we have no reason to believe that these management practices or natural succession rates will change in the foreseeable future. Therefore, through the information we have gathered since the time of listing, it appears that natural succession is not occurring at the level previously considered to threaten this species.

The final listing rule (65 FR 62302; October 18, 2000) included competition with exotic plants and noxious weeds as a threat to the Colorado butterfly plant. Competition with exotic plants and noxious weeds, here referred to as nonnative, invasive species, may pose a threat to the Colorado butterfly plant, particularly given the species' adaptation to more open habitats. In areas of suitable habitat for Colorado butterfly plant, the following plants may become dominant: The native coyote willow (*Salix exigua*); nonnative, invasive Canada thistle (*Cirsium arvense*); and nonnative, invasive leafy spurge (*Euphorbia esula*). Willow, in particular, increases in the absence of grazing or mowing. These species can outcompete and displace the Colorado butterfly plant, presumably until another disturbance removes competing vegetation and creates openings for Colorado butterfly plant seedlings to germinate (Fertig 1998a, p. 17). Since 2004, we have monitored populations of the Colorado butterfly plant that have slowly decreased in numbers or disappeared following the invasion and establishment of these other plant species, only to see Colorado butterfly plants return to the area following disturbance (USFWS 2016b, entire). Additionally, at least one population has moved to an uninvaded area downstream of its former invaded habitat (Handwerk 2016, pers. comm.), suggesting that populations can find more suitable habitat nearby.

Prior to listing, biological control agents were used to control nonnative, invasive species at Warren AFB and may have depressed numbers and extent of Canada thistle and leafy spurge. Introduced gall-forming flies have slowly become established on Warren AFB and have reduced the vigor, height, and reproductive ability of small patches of Canada thistle (Fertig 1997, p. 15), at least in some years (Heidel *et al.* 2016, p. 16). Also on the Warren AFB, a biocontrol agent for leafy spurge, a different flea beetle than infests the Colorado butterfly plant, was observed in 1997 (Fertig 1998b, p. 18). While the effects of biocontrol agents on nonnative, invasive species appear promising, we do not have sufficient current information on the status of these agents.

Natural succession was considered a threat to the Colorado butterfly plant at the time of listing. However, we now understand that the altered flood regime of today, coupled with disturbance from fire and grazing, is sufficient to maintain suitable habitat throughout much of the species' range. Competition with nonnative, invasive species is an ongoing stressor for portions of populations, although these invasive species tend not to survive the regular disturbances that create habitat for the Colorado butterfly plant. Therefore, while individuals or populations may be out-competed by native or nonnative, invasive species at higher succession levels, periodic disturbance maintains or creates new habitats for the Colorado butterfly plant.

Summary of Factor A

The following stressors warranted consideration as possible current or future threats to the Colorado butterfly plant habitat under Factor A: (1) Residential, urban, and energy development; (2) agricultural practices; (3) water management; and (4) natural succession and competition with nonnative, invasive species. However, these stressors are either being adequately managed, they have not occurred to the extent anticipated at the time of listing, or the species is tolerant of the stressor as described above. While these stressors may be responsible for loss of historical populations (they have negatively affected population redundancy), and are currently negatively affecting the populations in Nebraska, we do not anticipate a rangewide increase in these stressors in the future, although they will continue at some level.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Factor B was not considered a threat to the species at the time of listing (65 FR 62302; October 18, 2000). We are aware of three unpermitted collections of seeds of the Colorado butterfly plant for scientific and/or commercial purposes since the publication of the final listing rule. These three collections were limited events that occurred at an introduction site in Colorado and from a large, robust population in Wyoming. Based on recent population data, these unpermitted collection events had no apparent impact on the number and distribution of plants within these populations or the species' habitat (based on Heidel *et al.* 2016, p. 13; USFWS 2016b, entire).

Other than these collections, we are not aware of any attempts to use the Colorado butterfly plant for commercial, recreational, scientific, or educational purposes. In the future, we do not anticipate this species will be collected due to its lack of showiness for much of the year and because it occurs in generally inaccessible areas.

Summary of Factor B

At the time of listing, Factor B was not considered a threat to the Colorado butterfly plant. We are aware of only three unpermitted collections of the seeds of the species since listing. These collection events had no apparent effect on the number and distribution of plants from which the seeds were taken.

C. Disease or Predation

The listing of the Colorado butterfly plant (65 FR 62302; October 18, 2000) did not include threats from disease or predation, although livestock grazing was described as a potential threat if grazing pressures were high. No diseases are known to affect this species. In 2007, a precipitous decline in plant numbers was observed in many populations monitored in Colorado and Wyoming. The exact cause of the decline was not positively identified, but weather and insect herbivory were two potential contributing factors. Weather-related impacts included an early start to the growing season, lower than normal spring precipitation levels (which were magnitudes lower than in all previous years), and higher mean temperatures in late summer. Insect

herbivory also was suspected, as virtually all reproductive plants were riddled with holes, flowering/fruit production was curtailed or greatly reduced on all plants, and some bolted plants died before flowering; interestingly, no vegetative plants showed evidence of herbivory (Heidel *et al.* 2011, pp. 284–285). Flowering plant numbers remained low or declined further in 2008. Surveyors identified one or more flea beetle species that may have been responsible for the herbivory. The likely flea beetle species (*Altica foliaceae*) is a native species, and its numbers are not known to be affected by human causes.

Insect herbivory may not be a severe or immediate threat to Colorado or Wyoming populations as the impacted populations mentioned above rebounded to pre-infestation numbers in 2009 and 2010 (Heidel *et al.* 2011, p. 286). However, insect herbivory may be episodic and potentially tied to climate; preliminary tests have been run on insect herbivory's potential impact on population resiliency (Heidel *et al.* 2011, p. 286). For example, in 2014, intense herbivory from flea beetles at Soapstone Prairie and Meadow Springs Ranch resulted in high mortality and a reduction in bolting of vegetative rosettes (Strouse 2017, pers. comm.), and numbers of reproductive individuals in those populations were low in 2015 and 2016. We found that these populations rebounded in 2017 to record numbers, in the same way populations rebounded after the 2007 flea-beetle-caused decline. This herbivory has not been reported for the Nebraska populations, although it is possible that similar insect herbivory influenced 2008 survey results in Nebraska.

Colorado butterfly plant is highly palatable to a variety of insect and mammalian herbivores including Gaura moth (*Schinia gaurae*), cattle, horses, and pronghorn (*Antilocapra americana*), but the plant appears to have some capacity to compensate for herbivory by increasing branch and fruit production (Fertig 1994, p. 6; Fertig 2000a, p. 17). Livestock grazing can be a threat at some sites if grazing pressures are high due to animals not being rotated among pastures or if use is concentrated during the summer flowering and fruiting period. Additionally, plants may be occasionally uprooted or trampled by livestock and wildlife. In at least two locations where a population was divided by a fence, the heavily grazed side of the fence had few or no Colorado butterfly plants, while the ungrazed side had many (Marriott 1987, p. 27; USFWS 2016b, entire).

Heavy grazing at some times of the year may be detrimental to Colorado butterfly plant populations by temporarily removing reproductive individuals from a population and eliminating seed production for that year. However, even after many years of intensive grazing, populations have rebounded upon relief (USFWS 2012, pp. 11–21; USFWS 2016b, entire). This response is likely due to survival of nonreproductive individuals and recruitment from the seedbank. Moderate grazing acts as a disturbance that keeps the habitat in an open or semi-open state suitable for this species, and light to medium grazing can provide benefits by reducing the competing vegetative cover and allowing seedlings to become established (USFWS 1997, p. 8).

Summary of Factor C

In general, while disease or predation has had an occasional negative impact on individuals and localities, most of these impacts do not appear to affect entire populations, nor do these impacts persist for any extended period of time. Individuals are resilient to damage; vegetative plants (basal rosettes) appear to be resistant to damage from grazing activities and are capable of withstanding stochastic events, and reproductive plants send out additional flowering branches upon injury. Also, the lack of any known diseases affecting the species and the species' redundancy of many populations distributed across most of the historical range would likely provide a buffer to any type of catastrophic disease outbreak.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether the stressors identified within the other factors may be ameliorated or exacerbated by an existing regulatory mechanism or conservation efforts. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threats analyses under the other four factors, or otherwise enhance conservation of the species. Our consideration of these mechanisms is described in detail within each of the threats or stressors to the species (see discussion under each of the other factors).

For currently listed species, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. Therefore, we examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms would continue to help ensure that future threats will be reduced or minimized.

In our discussion under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. Presently, the Colorado butterfly plant is a Tier 1 species in the Plants of Greatest Conservation Need in Colorado (Colorado SWAP 2015, entire), and the species is listed on the State endangered species list for Nebraska, and will continue to be so designated due to the species' extreme rarity in Nebraska (Wooten 2008, p. 1).

When we listed the Colorado butterfly plant in 2000 (65 FR 62302; October 18, 2000), the majority of known populations occurred on private lands managed primarily for agriculture, with one population at Warren AFB, and a few other populations throughout the species' range under various local jurisdictions. The listing decision described the species' status as Sensitive by the U.S. Forest Service, although no populations occurred on Forest Service lands at the time. The listing decision also described the lack of protection extended to the Colorado butterfly plant through the Federal threatened status of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) that occurs in the same range of habitats due to the two species' use of differing successional stages of riparian habitats (65 FR 62302, October 18, 2000, p. 62307).

Today, the population on Warren AFB represents one of the largest and most highly resilient populations of the species; it is managed under an integrated natural resources management plan (Warren AFB 2017, entire) and a conservation and management plan under Air Force Information 32–7064 (CNHP 2004, entire). These plans call for annual monitoring, protection and maintenance, and research on threats and genetic variability of the population located there. Additionally, a Service employee is stationed at Warren AFB to manage its natural resources, which includes management of the Colorado butterfly plant and its habitat, such as directing herbicide application in the vicinity of the species' habitat. A Service employee will maintain this role at Warren AFB after delisting of the Colorado butterfly plant.

The population of the Colorado butterfly plant at Warren AFB has been monitored since before listing to determine population trends, detect any changes in its habitat, pursue viability assessment, and assess population response to different hydrological conditions. The monitoring results indicate that plant numbers fluctuate depending on climate and hydrology, and the Colorado butterfly plant seems to be capable of rebounding after extreme stochastic events such as the flea beetle infestation of 2007 (Heidel *et al.* 2016, pp. 15–17). Upon delisting (see **DATES**, above), when the protections of the Act are removed from the Colorado butterfly plant, the Warren AFB management plans will maintain protections for this plant, at least until the next plan revisions, which have yet to be scheduled. Additionally, the species will continue to be managed and monitored as part of the post-delisting monitoring plan.

Discovery and subsequent protection of large populations of the Colorado butterfly plant on lands owned and managed by CFCNAD are an important addition to conservation of the species after it was listed in 2000. The regulatory protections that these two populations receive from occurring on municipal natural areas lands include indefinite protections of land and water and restoration and rehabilitation of land and natural systems to build ecological diversity and permanence (City of Fort Collins 2014, pp. 1–2). Populations managed by CFCNAD are afforded protection from oil and gas development (The Nature Conservancy 2013, entire) and from water withdrawals (CFCNAD 2016b, entire), and are discussed above under Factor A. Also, as mentioned in ''Residential, Urban, and Energy Development'' under Factor A, chapters 3 and 4 of the Laramie County Land Use Regulations address floodplain management and require specific provisions and permits for construction within floodplains (Laramie County 2011, pp. 165–185), which encompass all Colorado butterfly plant habitat within the county; therefore, these regulations extend some level of protection to the species and its habitat. While protecting riparian and wetland species is not the intent of these regulations, plants growing within the floodplain receive the habitat protections outlined as part of the floodplain construction avoidance provisions.

Lands without specific regulatory mechanisms contain most populations of the Colorado butterfly plant. Over a decade of monitoring 11 occurrences on private lands in Wyoming (populations under WEAs) representing six 12-digit HUCs has documented fluctuations in population size about a stable mean, apparently driven by changes in precipitation and disturbance regime (USFWS 2012, pp. 11–22; USFWS 2016b, entire). Management of lands under WEAs is discussed under Conservation Efforts, above.

While no known populations occur on lands managed by BLM in Wyoming, BLM completed a programmatic consultation under section 7 of the Act on potential impacts to the species and its critical habitat (BLM 2005, entire). The conservation measures that BLM committed to under this consultation will ensure the species is not adversely affected should a population be discovered on BLM lands. This consultation included specific conservation measures to be implemented in grazing areas managed by BLM that overlap potential Colorado butterfly plant habitats. These conservation measures are incorporated into BLM's resource management plan, which regulates and guides how BLM lands are managed. Therefore, if any populations of the Colorado butterfly plant are found on lands administered by BLM, they would benefit from the conservation measures already agreed upon with the Service. Upon delisting (see **DATES**, above), when the protections of the Act are removed from the Colorado butterfly plant, the species will continue to be afforded the protections outlined in BLM's resource management plan until the plan is revised.

Water use is managed under the PRRIP, as described above under Factor A, which ensures that water use in the Platte River is conducted in a way to maintain volume at certain times of the year in the central and lower reaches of the Platte River in Nebraska. Because all of the watersheds in which the Colorado butterfly plant is found occur within the PRRIP, the water on which the species depends is managed under this program (PRRIP 2019). The water that this species requires continues to be addressed under the PRRIP, even when the Colorado butterfly plant is removed from the List.

Summary of Factor D

At the time of listing (65 FR 62302; October 18, 2000), we stated that no Federal or State laws or regulations specifically protected populations of the Colorado butterfly plant or its habitat. However, two of the three largest populations occur on Warren AFB and lands owned and managed for the species by CFCNAD where regulatory mechanisms now exist. Additionally, 13 years of annual monitoring of 11 survey areas on private lands under WEAs that has occurred since the species was listed has shown that land used for agricultural purposes can be compatible with the resilience of the species, even without any regulatory mechanism in place (see discussions under Factors A, C, and E). Consequently, we find that several conservation measures, along with existing regulatory mechanisms, as discussed above, will continue to address stressors to the Colorado butterfly plant absent protections under the Act.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Factor E requires the Service to consider any other factors that may be affecting the Colorado butterfly plant. Under this factor, we discuss small population size and restricted range, herbicide spraying, and climate change.

Small Population Size and Restricted Range

The final listing rule (65 FR 62302; October 18, 2000) included the limited range and the small population size of many populations as a threat to the Colorado butterfly plant. Historically, Colorado butterfly plant populations occurred from Castle Rock, Colorado, north to Chugwater, Wyoming, and east into a small portion of southwest Nebraska. The extent of its range was approximately 6,880 ha (17,000 ac). Most of this range is still occupied, although some small and/or peripheral populations in Nebraska and Colorado have been extirpated since intensive survey efforts began. Despite the loss of these populations, the species continues to maintain multiple resilient, representative, and redundant

populations throughout nearly all of its range known at the time of listing (see figure, above).

We have evidence that populations throughout the range have persisted despite stochastic events that may have caused short-term declines in number of individuals. For example, a 100-year flood in August 1985 along Crow Creek on the Warren AFB inundated the Crow Creek portion of the population, knocking down some plants and surrounding vegetation, and depositing sediments (Rocky Mountain Heritage Task Force 1987, as cited in Heidel *et al.* 2016, p. 2). Instead of being extirpated, these populations rebounded in 1986, and continue to persist, as shown by annual monitoring since 1988 (summarized in Heidel *et al.* 2016, pp. 2–18). Additionally, based on annual monitoring of populations on private property in Wyoming, stochastic events such as floods and hail storms have reduced population numbers during the event year, then populations rebounded in following years (USFWS 2012, pp. 11–22; USFWS 2016b, entire). Individual plants may be vulnerable to random events such as fires, insect or disease outbreaks, or other unpredictable events. However, this species is adapted to disturbance, and rather than being extirpated, the seedbank can provide opportunity for populations to rebound after such events.

The historical range included populations farther south into Larimer and Weld Counties in Colorado that were lost prior to the listing of the species in 2000. No populations in Larimer and Weld Counties in Colorado have been extirpated since the species was listed, and we do not think that further range restriction has occurred in this portion of the species' range. In the future, range restriction may occur through loss of peripheral populations in the three 12-digit HUCs in Nebraska where dewatering has removed formerly suitable habitat (Wooten 2008, entire). However, these 12-digit HUCs are downstream of highly viable populations in Wyoming, and do not constitute a removal of the species from this drainage entirely. The resiliency and redundancy of populations across much of the species' range indicate that further range restriction is not likely.

Herbicide Spraying

At the time of listing (65 FR 62302; October 18, 2000), the non-selective use of broadleaf herbicides to control Canada thistle, leafy spurge, and other nonnative, invasive plants was considered a threat to the Colorado butterfly plant. Non-selective spraying has had negative effects on some Colorado butterfly plant populations (Fertig 2000a, p. 16). For example, in 1983, which was prior to listing, nearly one-half of the mapped population on Warren AFB was inadvertently destroyed when sprayed with Tordon®, a persistent herbicide (Miller 1987, as cited in 65 FR 62302, October 18, 2000, p. 62307). The status of that portion of the population is unknown due to a subsequent lack of clear recordkeeping at that time, prior to a Service biologist being employed on site; all plant locations have been tracked in the time since the Service biologist and Wyoming Natural Diversity Database began working at Warren AFB. Herbicide use along road crossings in and adjacent to plant populations was also noted (65 FR 62302, October 18, 2000, p. 62307).

After the 2000 listing of the Colorado butterfly plant, the Service worked with Warren AFB and private landowners under WEAs to develop best management practices for applying herbicides within the vicinity of known occurrences to remove nonnative, invasive species while minimizing adverse effects to individual Colorado butterfly plants. For example, the WEAs require an herbicide-application buffer of 30.5 m (100 ft) from known locations of the Colorado butterfly plant. However, at one property, the landowner inadvertently sprayed individual plants in spring 2016. During subsequent monitoring, Service staff observed reddened plants with shriveled leaves, which likely reduced the vigor of those individuals (USFWS 2016b, entire). We presume that there will be no long-term effects on the population, and in fact, we found vigorous Colorado butterfly plants growing in this area during surveys in 2017. Furthermore, we anticipate that landowners will continue to maintain this buffer in accordance with requirements under the WEAs when the species is delisted, although we have no assurances that the buffer will be maintained post-delisting.

While herbicide application may continue to occasionally inadvertently remove sprayed individuals from populations in which herbicide is applied, we know that unsprayed individuals persist in the population and can repopulate Colorado butterfly plants in areas where plants were killed. The seedbank can play an additional role in restoring Colorado butterfly plants to areas that have been sprayed. Based on our records, herbicide application is a management tool used in conjunction with nonnative, invasive species removal in only four of the known occurrences of the species, and these are among our largest and most resilient populations of the species. Our records indicate that, in general, application of buffers has been successful at reducing the presence of invasive species and competition near the Colorado butterfly plant (USFWS 2012, pp. 24–25; USFWS 2016b, entire), and when conducted appropriately, herbicide application can help improve habitat for the Colorado butterfly plant by eliminating competition.

Climate Change

Impacts from climate change were not considered in the final rule to list the species (65 FR 62302; October 18, 2000) or in the critical habitat designation (70 FR 1940; January 11, 2005). Our current analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

According to IPCC, ''most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change on most landscapes'' (IPCC 2014, p. 13). Plant species with restricted ranges may experience population declines as a result of climate change. The concept of changing climate can be meaningfully assessed both by looking into the future and reviewing past changes. A review of Wyoming climate since 1895 indicates that there has been a significant increase in the frequency of warmer-than-normal years, an increase in temperatures throughout all regions of the State, and a decline in the frequency of ''wet'' winters (Shumann 2011, entire). Data from the Cheyenne area over the past 30 years indicate a rise in spring

temperatures (Heidel *et al.* 2016, pp. 6–7). The current climate in Colorado butterfly plant habitat is quite variable, with annual precipitation ranging from 25–50 cm (10–20 in) of rain and 81–275 cm (32–108 in) of snow per year near the center of the species' range at Cheyenne Municipal Airport (NOAA 2016, entire). The years 2000 through 2006 appeared to have lower than average precipitation (NOAA 2016, entire), which may have affected the ability of plants to withstand a flea beetle outbreak in 2007 (Heidel *et al.* 2011, p. 286). The Colorado butterfly plant is semelparous (individual plants are first vegetative, then flower and fruit, and then die). Therefore, individuals are likely capable of remaining in a vegetative state under some conditions and duration until suitable flowering conditions exist, suggesting that the species is adapted to variability in the amount and timing of precipitation.

Climate change may affect the timing and amount of precipitation as well as other factors linked to habitat conditions for the Colorado butterfly plant. For example, ensemble climate models predict that by 2050, watersheds containing the species will become warmer for all four seasons, and precipitation will increase in the winter and remain about the same in spring, summer, and fall (USGS 2016, pp. 1–3). Snow water equivalent will decrease in winter and spring, and soil water storage will decrease in all four seasons (USGS 2016, pp. 4–5). This climate modeling predicts an increase in winter precipitation, but decreases in soil water storage will mean less water for subirrigation of the species' habitat. This may mean a shorter window for seed germination, lower seed production, and potentially increased years at the rosette stage to obtain sufficient resources to bolt and flower. However, we also understand that C_3 plants (plants which combine water, sugar, and carbon dioxide in carbon fixation), including this species, have a 41 percent proportional increase in growth resulting from a 100 percent increase in carbon dioxide (Poorter 1993, p. 77). This increase in growth rate due to higher carbon dioxide may counteract the need to spend more time in the vegetative portion of the life cycle in response to climate change. Furthermore, exposure to higher concentrations of carbon dioxide causes plants to reduce the number and aperture of their stomata, which decreases the amount of water that is lost during transpiration (Lammertsma *et al.* 2011, p. 4035), which may offset declines in water availability during droughts. Additionally, populations are able to withstand several consecutive years of poor growing conditions and still rebound with suitable conditions (USFWS 2012, pp. 11–22; USFWS 2016b, entire). The effects of climate change have the potential to affect the species and its habitat if flea beetle outbreaks occur or if flowering levels are suppressed. Although we lack scientific certainty regarding what those changes may ultimately mean for the species, based on the best available information, we expect that the species' current adaptations to cope with climate variability will mitigate any impact on population persistence.

Summary of Factor E

Under this factor, we discussed the Colorado butterfly plant's small population size and restricted range, herbicide spraying, and climate change.

In 2000, when we listed the species, the stochastic extirpation of individual populations suggested that the range of the species might be declining. Despite the fact that some populations in Colorado, Wyoming, and Nebraska were extirpated prior to listing, and others in Nebraska were extirpated after listing, four additional populations have been discovered, two of which are protected, and there are still representative and redundant populations occurring throughout the range of the species. Further, individuals and populations are resilient to a single herbicide application, and have been shown to survive or bounce back from such events. Information shared with landowners has greatly reduced the indiscriminate application of herbicides near populations of the Colorado butterfly plant. Finally, while the effects of climate change present a largely unknown potential stressor to the species, individual plants are capable of deferring the reproductive stage until suitable conditions are available, populations are made up of individuals found in a range of microhabitats, and populations are located within various ecological settings within the species' range. This indicates that the resiliency, redundancy, and representation of populations will maintain the species in the face of climate change.

Combination of Factors

Many of the stressors discussed in this analysis could work in concert with each other and result in a cumulative adverse effect to the Colorado butterfly plant, *e.g.,* one stressor may make the species more vulnerable to other threats. For example, stressors discussed under Factor A that individually do not rise to the level of a threat could together result in habitat loss. Similarly, small population size and a restricted range in combination with stressors discussed under Factor A could present a potential concern. However, most of the potential stressors we identified either have not occurred to the extent originally anticipated at the time of listing or are adequately managed as described in this rule. Furthermore, those stressors that are evident, such as the effects of climate change and grazing, appear well-tolerated by the species. In addition, for the reasons discussed in this rule, we do not anticipate stressors to increase on lands that afford protections to the species (Warren AFB and CFCNAD lands) where many of the largest populations occur. Furthermore, the increases documented in the number and size of many populations since the species was listed do not indicate that cumulative effects of various activities and stressors are affecting the viability of the species at this time or into the future.

Summary of Comments and Recommendations

In the proposed rule published in the **Federal Register** on June 8, 2018 (83 FR 26623), we requested that all interested parties submit written comments on our proposal to delist the Colorado butterfly plant by August 7, 2018. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. All substantive information provided during the comment period has either been incorporated directly into this final rule or is addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270) and updated guidance issued on August 22, 2016 (USFWS 2016c, entire), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with the Colorado butterfly plant, its habitat, its biological needs and potential threats, or principles of conservation biology. We received a response from one peer reviewer.

We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding the proposed delisting of the Colorado butterfly plant. The peer reviewer provided additional information, clarifications, and suggestions to improve the final rule, which we include in this rule or address

in the responses to comments below. The peer reviewer did not favor or oppose delisting the Colorado butterfly plant and provided only technical comments and editorial suggestions on the rule.

(1) *Comment:* The peer reviewer brought up the concern of genetic contamination resulting from unauthorized introductions of plant material from unknown or known sources as a potential threat to the species. The peer reviewer provided no data on genetic contamination on this or any related species to support this concern.

Our Response: The Service has no information that suggests that genetic contamination is occurring or has occurred or that unauthorized introductions have had a negative effect on any known populations. Therefore, we do not discuss genetic contamination as a potential threat affecting the species in this rule.

(2) *Comment:* The peer reviewer suggested that we clarify the definition of a population used in the final rule because the term ''watershed'' can be unclear.

Our Response: Throughout this rule, we refer to a population of the Colorado butterfly plant as all plants that occur within the same 12-digit hydrologic unit code (HUC) watershed. Plants in the same drainage but upstream or downstream of the 12-digit HUC are considered separate populations.

(3) *Comment:* The peer reviewer questioned our description of resiliency, asking why we did not consider any population to be stable that persists year after year.

Our Response: The analysis for the delisting of the Colorado butterfly plant focuses on the resiliency of populations rather than focusing on the term ''stable'' because of the dramatic variation in population numbers exhibited by most monitored populations. Resiliency includes not only population numbers but also trends in population numbers in response to management and stressors. A hypothetical population may persist year after year during the monitoring, but with declining numbers in response to management activities. We would not consider such a population to have high resiliency due to the declining trend and management that is not compatible with the persistence of the population.

(4) *Comment:* The peer reviewer asked if suitable habitat is still present at the six historical occurrences not documented since 1984, and when the sites were last surveyed in a good year.

Our Response: The Service has not made observations of habitat quality outside of populations under agreement. Element occurrence records from State agencies indicate visits to the sites in the 2000s and 2010s without finding Colorado butterfly plants, and included descriptions of habitat quality being typically suitable for the Colorado butterfly plant.

(5) *Comment:* The peer reviewer pointed out that our analysis of population resiliency did not include acreage of suitable habitat across years.

Our Response: The 2000 listing rule states, ''In order for a population to sustain itself, there must be enough reproducing individuals and sufficient habitat to ensure survival of the population. It is not known if the scattered populations of [the Colorado butterfly plant] contain sufficient individuals and diversity to ensure their continued existence over the long term'' (65 FR 62302, October 18, 2000, p. 62308). The Service has focused on the number of individuals and the diversity of their habitats in our monitoring efforts, specifically because the acreage of suitable habitat has been: (a) Difficult to determine based on the wide variation in habitat types occupied by this species; (b) occupied or unoccupied in any given year; (c) variable due to the frequent disturbances (floods, mowing, succession, etc.) affecting areas typically occupied by the Colorado butterfly plant; and/or (d) more or less constant in the agreement areas and does not provide us with valuable information about how the population is faring.

(6) *Comment:* The peer reviewer requested that a table be included in the final rule describing each of the occurrences/populations by name and State, the acres of suitable habitat present at each site, ownership of the site, the mean number of individuals, and indication of the threats to each occurrence at listing compared to now.

Our Response: Due to complexity of the table and costs associated with publication in the **Federal Register**, in this rule we omit the requested table, which can be found in the 2017 species biological report at *http://www.regulations.gov* under the supporting materials for Docket No. FWS–R6–ES–2018–0008. We have attempted to crosswalk all references to specific populations in this rule with other population identifiers used in the 2000 listing rule (65 FR 62302; October 18, 2000) and the 2005 designation of critical habitat (70 FR 1940; January 11, 2005).

(7) *Comment:* The peer reviewer pointed out an inconsistency in the description of management methods used by the City of Fort Collins Natural Areas Department at the Meadow Springs Ranch. The 2000 listing rule (65 FR 62302; October 18, 2000) said that the Meadow Springs Ranch was managed for municipal sewage treatment while the 2018 delisting proposed rule (83 FR 26623; June 8, 2018) described the site as managed to maintain suitable habitat for the Colorado butterfly plant.

Our Response: This large ranch is managed for both purposes, although the portion of the ranch where the Colorado butterfly plant occurs is not used for municipal sewage.

(8) *Comment:* The peer reviewer requested population-by-population assessment of threats and conservation actions.

Our Response: This final rule summarizes the overall picture of population status and analysis of stressors. Potential threats affecting populations are described in detail in the 2017 species biological report, which is available at *http://www.regulations.gov* under the supporting materials for Docket No. FWS–R6–ES–2018–0008.

(9) *Comment:* The peer reviewer questioned why the Service did not include potential loss of isolated populations that may contain unique alleles as a threat under Factor E.

Our Response: The genetic work conducted on this species to date has found very low genetic variation within and among populations (Tuthill and Brown 2003, pp. 254–256; Floyd 1995, pp. 73–81). There is no information to suggest that loss of isolated populations would reduce the genetic variation of the species, so that is not assessed as a threat under Factor E in this rule.

Public Comments

We received 14 letters from the public that provided comments on the proposed rule. Ten of the commenters included their views on whether the Colorado butterfly plant should be delisted. We also received four comments that were not directly related to the proposed action in any way and are not addressed below.

Relevant public comments are addressed in the following summary, and new information was incorporated into this final rule as appropriate.

(1) *Comment:* Three commenters acknowledged recovery of the Colorado butterfly plant, but suggested that we should not delist the species due to the loss of protections under the Act.

Our Response: The Act has been successfully applied to this species through work with Federal and private landowners who manage their lands while protecting the species. For the reasons discussed in this rule, the

species is not in danger of extinction now or in the foreseeable future, and so it no longer meets the Act's definition of a threatened species and no longer requires the protections of the Act.

(2) *Comment:* One commenter said that climate change was not addressed adequately in the proposed rule.

Our Response: The potential effects of climate change on the viability of this species are discussed in more detail in this final rule. In particular, we note that plants may fare better with increased carbon dioxide (CO_2) due to the increased ability to photosynthesize, paired with decreased water loss through transpiration because plants have reduced number and aperture of stomata under heightened CO_2. Predictions of temperature and precipitation regimes are unclear, as are the predictions regarding severity of storms, although we understand that this species is adapted to respond to unfavorable conditions by delaying bolting. This may be offset by the heightened ability for rapid growth due to increased CO_2.

(3) *Comment:* One commenter supported delisting the species but argued to maintain designated critical habitat.

Our Response: Under the Act, only those species listed as endangered or threatened species can have designated critical habitat. Therefore, the delisting of the Colorado butterfly plant also removes the designation of the plant's critical habitat.

(4) *Comment:* One commenter was concerned that threats had not been adequately addressed and that the species would need to be relisted in the future.

Our Response: None of the stressors that were thought to affect this species in 2000, when we listed the species (65 FR 62302; October 18, 2000), is currently affecting this species at a high level and is not predicted to worsen, as discussed in the 2017 species biological report, which is available at *http://www.regulations.gov* under the supporting materials for Docket No. FWS–R6–ES–2018–0008. The Service is implementing a post-delisting monitoring plan that will allow for the monitoring of a subset of populations throughout the range of the species. If monitored populations are determined to be imperiled, the Service has a process for re-evaluating the status of the species and reinstating protections under the Act, if needed.

Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error. The same factors apply whether we are analyzing the species' status throughout all of its range or a significant portion of its range.

Colorado Butterfly Plant's Status Throughout All of Its Range

After evaluating threats to the species under the section 4(a)(1) factors, we considered all of the stressors identified at the time of listing in 2000, as well as newly identified potential stressors such as oil and gas energy development and the effects of climate change. The stressors considered in our five-factor analysis (discussed in detail above under Summary of Factors Affecting the Species) fall into one or more of the following categories:

- *Minimized or mitigated:* The following stressors are adequately managed, and existing information indicates that this will not change in the future: Residential, urban, and energy development; agricultural practices; water management; overutilization; and herbicide spraying.
- *Avoided:* The following stressor has not occurred to the extent anticipated at the time of listing, and existing information indicates that this will not change in the future: Small population size and restricted range.
- *Tolerated:* The species is tolerant of the following stressors, and existing information indicates that this will not change in the future: Natural succession and competition with nonnative, invasive species; disease and predation; and the effects of climate change.

These conclusions are supported by the available information regarding the species' abundance, distribution, and trends as outlined in the species biological report (USFWS 2017, entire), and are in agreement with conclusions presented in our 2010 recovery outline (USFWS 2010, entire) and in our 5-year review (USFWS 2012, entire) that the Colorado butterfly plant is not facing any imminent or significant threats. Thus, after assessing the best available information, we conclude that the Colorado butterfly plant is not in danger of extinction throughout all of its range nor is it likely to become so in the foreseeable future.

Colorado Butterfly Plant's Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Service to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language.

Having determined that the Colorado butterfly plant is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be

significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. Conversely, we emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant; and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For the Colorado butterfly plant, we chose to evaluate the status question (*i.e.,* identifying portions where the Colorado butterfly plant may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats, including cumulative effects: Residential, urban, and energy development; agricultural practices; water management; natural succession and competition with nonnative, invasive species; overutilization; disease and predation; inadequacy of existing regulatory mechanisms; small population size and restricted range; herbicide spraying; and the effects of climate change. The only geographically concentrated threat is grazing and water management of the three 12-digit HUCs in Nebraska. Grazing and water management, particularly the dewatering of Lodgepole Creek downstream of the Wyoming/Nebraska border in the three 12-digit HUCs in Nebraska, has proven to impact populations in that portion of the species' range. This stressor has affected these populations to a level that the populations were presumed extirpated at the time we designated critical habitat for this species (70 FR 1940; January 11, 2005). However, after water was reintroduced to the creek by a landowner, Colorado butterfly plants were again observed in Lodgepole Creek (Wooten 2008, p. 4). It is possible that the species only occurs in this portion of its range during times of adequate subirrigation and surface flows, and that seeds either remain dormant at this location for several years or are transported from neighboring populations located upstream on Lodgepole Creek in Wyoming. Nevertheless, the removal of water from Lodgepole Creek impacts populations of the Colorado butterfly plant within this portion of the species' range.

Because we identified an area on the periphery of the species' current range as warranting further consideration due to the geographic concentration of threats from water management, we then evaluated whether this area may be significant to the Colorado butterfly plant. The Service's most-recent definition of ''significant'' has been invalidated by the courts (for example, *Desert Survivors* v. *Dep't of the Interior,* No. 16–cv–01165–JCS (N.D. Cal. Aug. 24, 2018)). Therefore, we determined whether the three populations in Nebraska could be significant under any reasonable definition of ''significant.'' To do this, we evaluated whether these populations taken together may be biologically important in terms of the resiliency, redundancy, or representation of the species.

Regarding redundancy, the populations within this portion of the range occur on the eastern extreme of the historical range of the species and represent a very small component of the total distribution of the species, occurring downstream of several highly viable populations. Therefore, these populations do not substantially increase redundancy at the species level. Regarding resiliency, individual plants in this portion of the range may be resilient to dewatering or other stressors, but the populations contain few individuals and are, therefore, threatened by stochastic events. Regarding representation, we understand that there may be connectivity among the populations occurring in Nebraska and the populations upstream on Lodgepole Creek in Wyoming. However, this connectivity is likely only through limited pollinator movement among the few flowering plants at any location, and through seed dispersal downstream from Wyoming to Nebraska, considering the distance is too great (greater than 1 km (0.6 mi)) for most pollinators to travel (Heidel 2016, pers. comm.). Consequently, the populations in Nebraska are likely not contributing any genetic information upstream. We do not have genetic information on these populations, but we understand that the populations in this portion of the species' range do not occupy unique ecological settings, have unique morphology, or have differing phenology than other populations of the species on Lodgepole Creek or in the rest of the species' range.

After careful examination of the Colorado butterfly plant population in the context of our definition of ''significant portion of its range,'' we determined that the area in Nebraska on the periphery of the range warranted further consideration because threats are geographically concentrated there. After identifying this area, we determined that it is not biologically significant to the Colorado butterfly species as a whole because the Colorado butterfly plants in this area do not contribute meaningfully to the overall viability of the species. This is because the remainder of the species is characterized by high levels of resiliency, redundancy, and representation; the remainder of the species contains all of the highly and moderately resilient populations (high resiliency), is comprised of more than 20 populations distributed through a geographically connected area (high redundancy), and includes all of the ecological settings this species is known to inhabit (high representation). Therefore, we have determined that the Colorado butterfly plant is not in danger of extinction, or likely to become so in the foreseeable future, within a

significant portion its the range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Colorado Butterfly Plant's Determination of Status

Our review of the best available scientific and commercial information indicates that the Colorado butterfly plant is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we are removing the Colorado butterfly plant from the Federal List of Endangered and Threatened Plants at 50 CFR 17.12(h) due to recovery.

Effects of the Rule

This final rule revises 50 CFR 17.12(h) by removing the Colorado butterfly plant from the Federal List of Endangered and Threatened Plants. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species. Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Colorado butterfly plant or its designated critical habitat. This rule also removes the designation of critical habitat for the Colorado butterfly plant in Wyoming (codified at 50 CFR 17.96(a)).

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We are delisting the Colorado butterfly plant based on recovery actions taken and new information we have received. As delisting is due in part to recovery actions taken by Warren AFB, CFCNAD, and BLM, we have prepared a final post-delisting monitoring (PDM) plan for the Colorado butterfly plant with input from these and other partners. Monitoring will occur annually for at least 5 years, beginning in 2020. At the end of 5 years, the species' population status will be evaluated, with four possible outcomes: (1) The Colorado butterfly plant remains secure without the Act's protections, resulting in the conclusion of the post-delisting monitoring; (2) the Colorado butterfly plant species may be less secure than anticipated at the time of delisting, but information does not indicate that the species meets the definition of an endangered species or a threatened species, resulting in an extension of the PDM plan for an additional 3 to 5 years; (3) the PDM yields substantial information indicating that stressors may be causing a decline in the status of Colorado butterfly plant since the time of delisting, resulting in the initiation of a formal status review to determine whether relisting the species is appropriate; or (4) the PDM documents a decline in the species' probability of persistence, such that the species once again meets the definition of an endangered species or a threatened species under the Act, resulting in the immediate initiation of relisting the species.

A final PDM plan is available (see **ADDRESSES** or *http://www.regulations.gov* under Docket No. FWS–R6–ES–2018–0008). We will work closely with our partners to maintain the recovered status of the Colorado butterfly plant and ensure post-delisting monitoring is conducted and future management strategies are implemented (as necessary) to benefit the Colorado butterfly plant.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes will be affected by this rule because no Tribal lands, sacred sites, or resources will be affected by the removal of the Colorado butterfly plant from the List of Endangered and Threatened Plants.

References Cited

A complete list of all references cited in this rule is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2018–0008, or upon request from the Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are staff members of the Wyoming Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry ''*Gaura neomexicana* ssp. *coloradensis*'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

■ 3. Amend § 17.96(a) by removing the entry ''Family Onagraceae: *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant)''.

Dated: October 29, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, For the U.S. Fish and Wildlife Service.

[FR Doc. 2019–24124 Filed 11–4–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[RTID 0648–XX020]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to RI and VA

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2019 commercial summer flounder quota to the State of Rhode Island and the Commonwealth of Virginia. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for North Carolina, Virginia, and Rhode Island.

DATES: Effective November 4, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2019 allocations were published on May 17, 2019 (84 FR 22392).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: The transfer or combinations would preclude the overall annual quota from being fully harvested, the transfer addresses an unforeseen variation or contingency in the fishery, and the transfer is consistent with the objectives of the GMP and the Magnuson-Stevens Act.

North Carolina is transferring 23,481 lb (10,651 kg) and 7,706 lb (3,495 kg) of summer flounder commercial quota to Rhode Island and Virginia, respectively, through mutual agreement of the states. These transfers were requested to repay landings made by North Carolina-permitted vessels in Rhode Island and Virginia under safe harbor agreements. Based on the revised Summer Flounder, Scup, and Black Sea Bass Specifications, the revised summer flounder quotas for fishing year 2019 are now: North Carolina, 2,926,555 lb (1,327,463 kg); Rhode Island, 1,745,943 lb (9,1946 kg); and Virginia, 2,398,416 lb (1,087,903 kg).

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

Dated: October 29, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–23966 Filed 11–4–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RIN 0648–XY053

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod total allowable catch (TAC) from catcher vessels using trawl gear to catcher vessels using hook-and-line gear, catcher/processors using trawl gear, vessels using jig gear, and vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the 2019 TAC of Pacific cod in the Western Regulatory Area of the GOA to be harvested.

DATES: Effective November 1, 2019 through 2400 hours, Alaska local time (A.l.t.), December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 Pacific cod TAC specified for catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA is 73 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

The 2019 Pacific cod TAC specified for catcher/processors using trawl gear in the Western Regulatory Area of the GOA is 125 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

The 2019 Pacific cod TAC specified for vessel using jig gear in the Western Regulatory Area of the GOA is 134 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

The 2019 Pacific cod TAC specified for vessels using pot gear in the Western Regulatory Area of the GOA is 1,980 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

The 2019 Pacific cod TAC apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA is 2,000 metric tons (mt), as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019). The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 330 mt of the 2019 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A)(*3*).

In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that catcher vessels using hook-and-line

gear, catcher/processors using trawl gear, vessels using jig gear, and vessels using pot gear currently have the capacity to harvest this excess allocation. Therefore, NMFS apportions 330 mt of Pacific cod from the trawl catcher vessel apportionment to catcher vessels using hook-and-line gear, catcher/processors using trawl gear, vessels using jig gear, and vessels using pot gear in the Western Regulatory Area of the GOA.

The harvest specifications for Pacific cod in the Western Regulatory Area of the GOA included in the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019) are revised as follows: 1,670 mt to catcher vessels using trawl gear, 155 mt to catcher/processors using trawl gear, 108 mt to vessels using hook-and-line gear, 184 mt to vessels using jig gear, and 2,195 mt to vessels using pot gear.

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 reallocations of Pacific cod in the Western Regulatory Area of the GOA. 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 October 28, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 31, 2019.

Ngagne Jafnar Gueye,

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

[FR Doc. 2019–24153 Filed 10–31–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 214
Tuesday, November 5, 2019

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

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 778

RIN 1235–AA31

Fluctuating Workweek Method of Computing Overtime

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This proposed rulemaking would revise the Department of Labor's (Department) regulation for computing overtime compensation for salaried nonexempt employees who work hours that vary each week (fluctuating workweek) under the Fair Labor Standards Act (FLSA or the Act). The proposal will clarify that payments in addition to the fixed salary are compatible with the use of the fluctuating workweek method of compensation, and that such payments must be included in the calculation of the regular rate as appropriate under the Act. The proposal would also add examples and make minor revisions to make the rule easier to understand.

DATES: Submit written comments on or before December 5, 2019.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA31, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. 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 rulemaking. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. For additional information on submitting comments and the rulemaking process, see the ''Electronic Access and Filing Comments'' heading below. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop. Director, Division of Regulations, Legislation, and Interpretation, Office of Policy, 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 proposed rule 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 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling 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 visit WHD's website for a nationwide listing of WHD district and area offices at *https://www.dol.gov/whd/america2.htm. Electronic Access and Filing Comments:* This proposed rule and supporting documents are available through the **Federal Register** and the *https://www.regulations.gov* website. You may also access this document via WHD's website at *https://www.dol.gov/whd/.* To comment electronically on Federal rulemakings, go to the Federal eRulemaking Portal at *https://www.regulations.gov,* which will allow you to find, review, and submit comments on Federal documents that are open for comment and published in the **Federal Register**. You must identify all comments submitted by including ''RIN 1235–AA31'' in your submission. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period (11:59 p.m. on the date identified above in the **DATES** section); comments received after the comment period closes will not be considered. Submit only one copy of your comments by only one method. 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 *https://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FLSA guarantees a minimum wage for all hours worked and limits to 40 the number of hours per week a covered nonexempt employee can work without additional compensation. *See* 29 U.S.C. 206, 207. Payment of a fixed salary for fluctuating hours, also called the ''fluctuating workweek method,'' is one way employers may meet their overtime pay obligations to nonexempt employees, if certain conditions are met. Under 29 CFR 778.114, an employer may use the fluctuating workweek method for computing overtime compensation for a nonexempt employee if the employee works fluctuating hours from week to week and receives, pursuant to an understanding with the employer, a fixed salary as straight time ''compensation (apart from overtime premiums)'' for whatever hours the employee is called upon to work in a workweek, whether few or many. 29 CFR 778.114(a). In such cases, because the salary ''compensate[s] the employee at straight time rates for whatever hours are worked in the workweek,'' an employer satisfies the overtime pay requirement of section 7(a) of the FLSA if it compensates the employee, in addition to the salary amount, at a rate of at least one-half of the regular rate of pay for the hours worked each workweek in excess of 40. 29 CFR 778.114(a). Because the employee's hours of work fluctuate from week to week, the regular rate must be

determined separately each week based on the number of hours actually worked each week. *Id.*

The payment of additional bonus and premium payments to employees compensated under the fluctuating workweek method has presented challenges to employers and the courts alike, as set forth in more detail below. The proposed regulation would clarify that bonus payments, premium payments, and other additional pay are consistent with using the fluctuating workweek method of compensation, and that such payments must be included in the calculation of the regular rate unless they may be excluded under FLSA sections 7(e)(1)–(8). *See* 29 U.S.C. 207(e)(1)–(8).

The Department proposed a similar clarification through a Notice of Proposed Rulemaking (NPRM) in 2008. *See* 73 FR 43654, 43662, 43669–70 (July 28, 2008). However, the Final Rule issued in 2011 did not adopt this proposal because the Department, at the time, believed that courts had ''not been unduly challenged'' in applying the current regulatory text, that the proposed clarification ''would have been inconsistent'' with the Supreme Court's decision in *Overnight Motor Transportation Co.* v. *Missel,* 316 U.S. 572 (1942), and that the proposed clarifying language ''may create an incentive'' for employers ''to require employees to work long hours.'' 76 FR 18832, 18848–50 (Apr. 5, 2011). However, since 2011, courts have reached inconsistent holdings based on a judicially crafted distinction between certain types of bonuses that the Department has never recognized. As explained below, the Department has reconsidered the need for a clarification, particularly in light of the 2011 Final Rule and its interpretation by courts, now finds these reasons articulated in 2011 to be unpersuasive, and is therefore re-proposing substantially similar revisions to those initially proposed in 2008.

Specifically, the Department proposes to add language to § 778.114(a) clarifying that bonuses, premium payments, and other additional pay of any kind are compatible with the use of the fluctuating workweek method of compensation. The Department also proposes to add examples to § 778.114(b) to illustrate the fluctuating workweek method of calculating overtime where an employee is paid (1) a nightshift differential and (2) a productivity bonus in addition to a fixed salary. The Department further proposes minor revisions to § 778.114(a) and (c) that were not proposed in the 2008 NPRM to improve comprehensibility. Specifically, revised § 778.114(a) would list each of the requirements for using the fluctuating workweek method, and duplicative text would be removed from revised § 778.114(c). Finally, the Department proposes to change the title of the regulation from ''Fixed salary for fluctuating hours'' to ''Fluctuating Workweek Method of Computing Overtime.''

This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Details on the estimated reduced burdens and cost savings of this proposed rule can be found in the rule's economic analysis and supplemental illustrative analysis in Appendix A.

II. Background

The Department introduced the fluctuating workweek method of calculating overtime pay in its 1940 Interpretive Bulletin No. 4. *See* Interpretative Bulletin No. 4 ¶ ¶ 10, 12 (Nov. 1940). In 1942, the U.S. Supreme Court upheld the fluctuating workweek method in *Missel,* 316 U.S. at 580. In that case, the Court held that where a nonexempt employee had received only a fixed weekly salary (with no additional overtime pay) for working irregular hours that frequently exceeded 40 per week and fluctuated from week to week, the employer was required to retroactively pay an additional 50 percent of the employee's regular rate of pay multiplied by the overtime hours worked to satisfy the FLSA's time and a half overtime pay requirement. *Id.* at 573–74, 580–81.[1] The quotient of the weekly salary divided by the number of hours actually worked each week, including the overtime hours, determined the ''regular rate at which [the] employee [was] employed'' under the fixed salary arrangement. *Id.* at 580.

In 1968, informed by the Supreme Court's holding in *Missel,* the Department issued 29 CFR 778.114, which explains how to perform the regular rate calculation under the FLSA for salaried employees who work fluctuating hours. *See* 29 CFR 778.1, 778.109, 778.114. The Supreme Court has ''interpreted the [FLSA] statute in a manner that would 'afford the fullest possible scope to agreements' that are designed to address 'the special problems confronting employer and employee in businesses where the work hours fluctuate from week to week and from day to day . . . .' '' *Hunter* v. *Sprint Corp.,* 453 F. Supp. 2d 44, 56–57 (D.D.C. 2006) (quoting *Walling* v. *A.H. Belo Corp.,* 316 U.S. 624, 635 (1942)).[2] Indeed, ''[t]he [fluctuating workweek] method was developed to permit FLSA-covered employees who work irregular hours to negotiate a consistent *minimum* salary with their employers.'' *Hunter,* 453 F. Supp. 2d at 61 (emphasis in original).

Consistent with this manner of interpretation and purpose, the Department, until 2011, had never explicitly forbidden in rulemaking the payment of bonuses and premiums beyond the minimum salary to employees compensated under the fluctuating workweek method. As explained more fully below, to the contrary, in both a 2008 NPRM and in a 2009 opinion letter, the Department stated that such bonuses were consistent with using the fluctuating workweek method. However, in the Preamble to the 2011 Final Rule, the Department stated a different position. The Department now seeks to add clarifying language to 29 CFR 778.114 affirming its current position that employers using the fluctuating workweek method to calculate overtime compensation may pay bonuses and premiums in addition to the minimum salary.

Early examples of Department guidance and court decisions exemplify interpretations of the FLSA that ''afford the fullest scope possible'' to fluctuating workweek arrangements. For example, a 1999 Wage and Hour Division (WHD) opinion letter explained that an employer using the fluctuating workweek method may pay bonuses for working holidays or vacations, broadly instructing that ''[w]here all the legal prerequisites for the use of the fluctuating workweek method of overtime payment are present, the

[1] Half-time, rather than time-and-a-half pay, for overtime is appropriate where the employee's weekly earnings constitute compensation for all hours worked that week, including overtime hours. Such a pay system already compensates the employee for overtime hours at the regular rate, and so the employee is entitled under the FLSA to an additional half-time the regular rate for those hours. *See* 29 U.S.C. 207(a).

[2] Note that *Belo* concerned a different type of flexible pay agreement, now codified under Section 7(f) of the FLSA, in which an employee was paid on an hourly basis with a guaranteed weekly sum. The Department only cites *Belo* here for the limited purpose of recognizing the manner in which the Court generally interprets work arrangements under the FLSA when work hours vary from week to week. In *Hunter,* the district court similarly referenced *Belo* in analyzing the regular rate, and found notable that the Court decided *Belo* and *Missel* on the same day and that both cases ultimately informed the promulgation of the fluctuating workweek regulatory scheme. *See Hunter,* 453 F. Supp. 2d at 56, 58 (''With the companion decisions of *Missel* and *Belo* as a backdrop, the Department of Labor promulgated regulations that provide 'examples of the proper method of determining the regular rate of pay in particular instances,' '' including the fluctuating workweek method.) (quoting § 778.109).

FLSA, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, *does not prohibit paying more.*'' [3] As another example, courts have applied and endorsed the fluctuating workweek method when employees received additional bonus payments beyond what was statutorily required. *See, e.g., Cash* v. *Conn Appliances, Inc.,* 2 F. Supp. 2d 884, 908 (E.D. Tex. 1997) (applying fluctuating workweek method where employee received incentive bonuses in addition to fixed salary); *see id.* at 893 n.17 (citing *Parisi* v. *Town of Salem,* No. 95–67–JD, 1997 WL 228509, at *3 (D.N.H. Feb. 20, 1997) (''The rules promulgated by the Secretary do not change when base compensation includes not only a salary but a bonus payment; the bonus payment is simply included in calculating the regular rate.'')).

However, in 2003, the First Circuit held that certain types of additional pay were incompatible with the fluctuating workweek method. *See O'Brien* v. *Town of Agawam,* 350 F.3d 279 (1st Cir. 2003). In *O'Brien,* the First Circuit held that police officers' receipt of ''bonus'' pay for working nights and long hours, was contrary to the fluctuating workweek method. *Id.* at 288. The *O'Brien* court reasoned that an employer using the method must pay a '' 'fixed amount as straight time pay for whatever hours . . . work[ed],' '' and *any* extra compensation would violate this '' 'fixed amount' '' requirement. *Id.* (quoting 29 CFR 778.114(a)).

The Department filed an amicus brief in support of the ultimate overtime-back-pay result in *O'Brien,* reasoning that the ''base salary covered only 1950 hours of work annually'' under the specific officers' agreement at issue, and therefore, this ''base salary was not intended to compensate them for an unlimited number of hours,'' as required by 29 CFR 778.114. Brief for the Sec'y of Labor as Amicus Curiae, *O'Brien,* 350 F.3d 279, 2004 WL 5660200, at *11, 13 (Feb. 20, 2004). In other words, the Department reasoned that the fluctuating workweek method could not be used because the officers' fixed salary was intended to compensate them for a specific—rather than fluctuating—number of hours each week. *Id.*[4]

However, the Department's brief did not address whether bonus pay beyond the ''fixed amount'' required was incompatible with the fluctuating workweek method.[5]

Some courts followed *O'Brien* to hold that certain types of bonuses were incompatible with the fluctuating workweek method,[6] while others continued to hold that bonuses were compatible with that method.[7] These inconsistent decisions appear to have created practical confusion for employers.

The Department's 2008 NPRM, in an effort to ''eliminate confusion over the effect of paying bonus supplements and premium payments to affected employees,'' proposed to add a sentence to the end of § 778.114(a) providing that payment of overtime premiums and other bonus and non-overtime premium payments will not invalidate the ''fluctuating workweek'' method of overtime payment, but such payments must be included in the calculation of the regular rate unless excluded under section 7(e)(1) through (8) of the FLSA. 73 FR at 43670. The Department also proposed to add ''an example to § 778.114(b) to illustrate these principles where an employer pays an employee a nightshift differential in addition to a fixed salary.'' *Id.* at 43662; *see also id.* at 43670. The proposed clarifying language in the 2008 NPRM reflected the Department's position that bonus and premium payments are compatible with the fluctuating workweek method.

On January 16, 2009, WHD reaffirmed this same position when it issued an opinion letter explaining that ''[r]eceipt of additional bonus payments does not negate the fact that an employee receives straight-time compensation through the fixed salary for all hours worked whether few or many, which is all that is required under § 778.114(a).'' WHD Opinion Letter FLSA2009–24 (Jan. 16, 2009) (withdrawn Mar. 2, 2009).

On May 5, 2011, the Department issued a Final Rule, which did not adopt the proposed clarifying language to § 778.114. *See* 76 FR 18832. Instead, in the Preamble, the Department stated it would leave the text of § 778.114 unchanged except for minor revisions. The Department expressly stated that the decision not to implement the proposed changes would avoid ''expand[ing] the use of [the fluctuating workweek] method of computing overtime pay beyond the scope of the current regulation,'' and would ''restore the current rule.'' 76 FR at 18850. The same 2011 Preamble, however, interpreted the ''current rule'' to mean that bonus and premium payments ''are incompatible with the fluctuating workweek method of computing overtime under section 778.114.'' 76 FR at 18850.

The 2011 Preamble's reference to the ''current rule'' appears to have generated further confusion among courts, as the ''record indicate[d] that in 2008 and 2009, . . . DOL construed the [fluctuating workweek] regulation to permit bonus payments,'' then ''shifted course'' in 2011 in a manner ''contrary to its publicly-disseminated prior position.'' *Switzer* v. *Wachovia Corp.,* No. CIV.A. H–11–1604, 2012 WL 3685978, at *4 (S.D. Tex. Aug. 24, 2012). For example, one court stated that the 2011 Preamble ''presents an about-face'' that ''alters the DOL's interpretation'' so as to prohibit employers from using the fluctuating workweek method for workers who receive bonuses. *Sisson* v. *RadioShack Corp.,* No. 1:12CV958, 2013 WL 945372, at *6 (N.D. Ohio Mar. 11, 2013). Another court presented with identical facts as *Sisson* reached an

[3] WHD Opinion Letter, 1999 WL 1002399, at *2 (May 10, 1999) (emphasis added).

[4] *Id.* at *16–18 (citing *Valerio* v. *Putnam Assocs. Inc.,* 173 F.3d 35, 39 (1st Cir. 1999) (holding that fluctuating workweek method was inappropriate where an employee was informed that her daily hours were ''8:30 to whenever,'' she understood that her salary would compensate her for fluctuating hours, but she ''routinely worked without complaint more than 40 hours per week without extra pay''); *Martin* v. *Tango's Restaurant, Inc.,* 969 F.2d 1319, 1324 (1st Cir. 1992) (approving use of fluctuating workweek method where employee was paid a certain fixed salary each week, regardless of the number of hours worked)).

[5] In reflecting on *Valerio* and *Tango's Restaurant,* the Department stated that ''[n]othing in either of those decisions suggests that 29 CFR 778.114 extends, contrary to its terms, to a pay system in which an employee, while receiving a fixed salary for a certain minimum number of hours, is paid more for additional straight time worked beyond a regular schedule.'' *O'Brien* Amicus Br. at *18 (citing *Valerio.,* 173 F.3d at 39; *Tango's Restaurant,* 969 F.2d at 1324). While the brief did not address the precise issue of whether bonus pay beyond the ''fixed amount'' required was incompatible with the fluctuating workweek method, to the extent that the brief could be read to suggest that this may have been the Department's position at the time, the Department is making clear that this is not the Department's current position. The Department instead seeks to clarify that bonus pay for extra straight time work is compatible with the fluctuating work week method. *See, e.g., Black* v. *Comdial Corp.,* Civ. A. No. 92–O81–C, 1994 WL 70113, at *2 (W.D. Va. Feb. 15, 1994) (''The provision of [straight time] bonus pay for hours 45–61 changes neither the salary basis of [an employee's] pay, nor the applicability of the fluctuating workweek method of 29 CFR 778.114.'').

[6] *See, e.g., Ayers* v. *SGS Control Servs., Inc.,* No. 03 CIV. 9077 RMB, 2007 WL 646326, at *10 (S.D.N.Y. Feb. 27, 2007) (''Plaintiff who received sea pay or day-off pay did not have 'fixed' weekly straight time pay, in violation of 29 CFR 778.114(a).''); *Dooley* v. *Liberty Mut. Ins. Co.,* 369 F. Supp. 2d 81, 87 (D. Mass. 2005) (bonus pay arrangement for weekend work violated requirement that ''the employee must receive a fixed salary that does not vary with the number of hours worked during the week'') (internal quotation marks and citation omitted).

[7] *See, e.g., Clements* v. *Serco, Inc.,* 530 F.3d 1224, 1230 (10th Cir. 2008) (applying fluctuating workweek method where employee received recruitment bonus in addition to fixed salary); *Perez* v. *RadioShack Corp.,* No. 02 C 7884, 2005 WL 3750320, at *1 (N.D. Ill. Dec. 14, 2005) (applying fluctuating workweek method where employee received tenure pay, commissions, and other bonuses in addition to fixed salary).

opposite conclusion because it interpreted the 2011 Preamble as ''a decision to maintain the status quo'' that ''does not[ ] disturb the law permitting employers to use the [fluctuating workweek] method to calculate the overtime pay of workers who receive performance bonuses.'' *Wills* v. *RadioShack Corp.,* 981 F. Supp. 2d 245, 259 (S.D.N.Y. 2013). As another example, a third court declined to give any weight to the 2011 Preamble because it rested on an ''unconvincing'' interpretation of *Missel. Smith* v. *Frac Tech Servs., LLC,* No. 4:09CV00679 JLH, 2011 WL 11528539, at *2 (E.D. Ark. June 15, 2011).

A growing number of courts, since 2011, have developed a dichotomy between ''productivity-based'' supplemental payments, such as commissions, and ''hours-based'' supplemental payments, such as night-shift premiums. Such courts hold that productivity-based supplemental payments are compatible with the fluctuating workweek method, but not hours-based supplemental payments. *See, e.g., Dacar* v. *Saybolt, L.P.,* 914 F.3d 917, 926 (5th Cir. 2018), *as amended on denial of rehearing* (Feb. 1, 2019) (''Time-based bonuses, unlike performance-based commissions, run afoul of the [fluctuating workweek] regulations''); *Lalli* v. *Gen. Nutrition Ctrs., Inc.,* 814 F.3d 1, 10 (1st Cir. 2016) (''a compensation structure employing a fixed salary still complies with section 778.114 when it includes additional, variable performance-based commissions''). However, the Department has never drawn this distinction, and this distinction is in tension with all of the Department's prior written guidance and statements on the issue, such as the 2004 *O'Brien* amicus brief (declining to support application of fluctuating workweek method to payment of additional straight-time hours), the 2008 NPRM and the 2009 opinion letter (permitting bonuses as compatible with the fluctuating workweek), and even the 2011 Final Rule (declining to implement the 2008 NPRM and stating that the current rule prohibits all bonuses as compatible with the fluctuating workweek).

As a result, the Department is increasingly concerned that it may be confusing and administratively burdensome for employers to distinguish between productivity- and hours-based bonuses and premium payments, particularly because the Department itself does not distinguish between such types of payment in determining the regular rate. *See* 29 CFR 778.208–778.215. The Department is further concerned that the ''productivity'' versus ''hours'' based distinction fails to provide adequate guidance to employers because it has not been adopted by all jurisdictions.[8] The Department also believes that this distinction is unhelpful for supplemental pay that does not fall neatly into either category, such as retention bonuses, safety bonuses, and referral bonuses.

The divergent views of the Department and courts—and indeed, even among courts—have created considerable uncertainty for employers regarding the compatibility of various types of supplemental pay with the fluctuating workweek method. As such, the need for the Department to clarify its fluctuating workweek rule is even stronger now than in 2008, when it proposed a substantially similar clarification.

III. Discussion

As an initial matter, the Department is making clear that employers and courts should not rely on the statement in the 2011 Preamble that ''bonus and premium payments . . . are incompatible with the fluctuating workweek method of computing overtime under section 778.114.'' 76 FR at 18850. The Department did not modify the regulatory text in 2011 to align with this statement. Further, the Preamble affirmatively denied it was making a change by insisting that the Department was ''restor[ing] the current rule.'' 76 FR at 18850. As the Supreme Court has explained, ''[w]hen an agency changes its existing position . . . the agency must at least display awareness that it is changing position.'' *Encino Motorcars, LLC* v. *Navarro,* 136 S Ct. 2117, 2125–26 (2016) (internal quotation marks and citations omitted). Because, for example, the *Switzer* court viewed the 2011 Preamble language as ''shifting course'' in a manner ''contrary'' to its prior position,[9] it is worth making clear that the Preamble does not reflect a change from the Department's position that the 2008 NPRM sought to clarify.

The 2011 Preamble reaffirmed that ''the Department continues to believe that the payment of bonus and premium payments can be beneficial for employees.'' 76 FR at 18850. Yet it declined to permit bonus and premium payments under the fluctuating workweek method because, in 2011, the Department believed that the receipt of premium and bonus payments ''would have been inconsistent with the requirement of a fixed salary payment set forth by the Supreme Court in [*Missel*].'' 76 FR at 18850. However, the 2011 Final Rule did not explain any basis for the perceived inconsistency, and at least one court has found that belief to be ''unconvincing'' because ''[n]othing in *Missel* prohibits the use of the fluctuating work week method . . . whenever an employer gives a bonus to an employee.'' *Smith,* 2011 WL 11528539, at *2.

Upon further review, the Department is now similarly unconvinced of its 2011 position. The pre-2011 position was not inconsistent with *Missel; Missel* did not even address the issue of bonus or incentive payments beyond the fixed salary, let alone preclude certain types of payments. The plaintiff in *Missel* had a fixed weekly salary regardless of hours worked, and the Court explained how to compute overtime compensation under those facts. As one court has explained, ''[T]he message from the Supreme Court in *Missel* . . . was that the employment contracts of FLSA-covered workers must guarantee that the regular rate of compensation in any given week will not fall below the statutory minimum wage.'' *Hunter,* 453 F. Supp. 2d at 57.[10]

The 2011 Final Rule also reflected the Department's concern, at the time, that permitting employers that offer bonus and premium payments to use the fluctuating workweek method of overtime payment could ''shift a large portion of employees' compensation into bonus and premium payments, potentially resulting in wide disparities in employees' weekly pay depending on the particular hours worked.'' 76 FR at 18850. Upon reconsideration, the Department is no longer concerned that employers would shift large portions of pay into bonus and premium payments and is not aware of any evidence of problematic pay shifting. To the contrary, the Bureau of Labor Statistics

[8] Decisions holding that all bonus and supplemental payments, including productivity based commissions, are incompatible with the fluctuating workweek remain good law in some heavily populated jurisdictions, including the Federal judicial districts for the Northern District of Ohio and the Middle District of Florida. *See Sisson,* 2013 WL 945372, at *2–7; *West* v. *Verizon Servs. Corp.,* No. 8:08–CV–1325–T–33MAP, 2011 WL 208314, at *11 (M.D. Fla. Jan. 21, 2011) (fluctuating workweek method invalid where employee ''received various bonus payments and commissions'').

[9] 2012 WL 3685978, at *4.

[10] *See also Smith,* 2011 WL 11528539, at *2 (''Nothing in *Missel* prohibits the use of the fluctuating work week method for calculating damages whenever an employer gives a bonus to an employee. A bonus given wholly at the discretion of the employer cannot be said to affect the mutual understanding between the employer and the employee that the employee's fixed salary comprises his entire compensation.'').

finds that in situations where employers are permitted to pay bonuses and premiums, such supplemental pay constitutes a relatively small portion of employees' overall compensation—no more than 5% for any occupation.[11] Accordingly, the Department finds no reason to believe that permitting employers using the fluctuating workweek method to pay bonuses would result in large-scale pay shifting. In fact, the Department now believes the proposal would encourage employers to pay these bonuses, premiums, and additional pay to salaried nonexempt employees who work fluctuating hours, and the Department does not believe that employers will shift large portions of salaries into such supplemental payments. Moreover, the Department's earlier concern that permitting employers who offer bonus and premium payments to use the fluctuating workweek would permit employers to pay a reduced fixed salary would be addressed by retaining the requirement that the fixed salary amount must be sufficient to provide compensation at a rate not less than the minimum wage.

Finally, the 2011 Final Rule was based on the Department's view that ''the courts have not been unduly challenged in applying the current regulation to additional bonus and premium payments.'' 76 FR at 18850. However, as discussed in the background section, courts applying the language from the 2011 Preamble have reached inconsistent holdings, even in cases concerning the same types of bonus and premium payments. *Compare Wills,* 981 F. Supp. 2d at 256 (holding that RadioShack's payment of quarterly and annual performance based bonuses is compatible with the fluctuating workweek method) *with Sisson,* 2013 WL 945372, at *1 (holding that RadioShack's payment of quarterly and annual performance based bonuses is not compatible with the fluctuating workweek method). Moreover, a growing number of courts, only through the lens of a wholly judicially developed distinction, now interpret the current regulation, as interpreted in the 2011 Preamble, to distinguish between productivity- and hours-based bonus and premium payments, even though the Department has never drawn that distinction. *See Dacar,* 914 F.3d at 926; *Lalli,* 814 F.3d at 10. Inconsistent decisions and the development of case law not reflecting any previous position of the Department convinces the Department that courts have been unduly challenged in applying the current regulation.

Accordingly, the Department is proposing to clarify the current regulation to allow employers who offer both productivity and hours based bonuses and premium payments to use the fluctuating workweek method of compensation; the proposed consistent treatment of all bonuses and premium payments that are included in the regular rate will eliminate any such confusion for employers. To further eliminate confusion, the Department is proposing to clarify that additional pay of any kind on top of the fixed salary is compatible with the fluctuating workweek method. The proposed inclusion of ''additional pay of any kind'' is intended to prevent disagreements over whether a payment is a ''bonus'' or ''premium.'' Examples of ''additional pay of any kind'' may include commissions, compensation falling within the FLSA's section 3(m), supplemental hourly or lump sum payments, and incentive-related sums.

In summary, the Department no longer finds persuasive the 2011 Final Rule's rationale for stating in the Preamble that bonus and premium payments are incompatible with the fluctuating workweek method. Paying employees bonus or premium payments for certain activities, such as working undesirable hours, is common[12] and, as the 2011 Final Rule recognized, ''can be beneficial for employees.'' 76 FR at 18850. The Department therefore proposes to clarify that all bonus and premium payments are compatible with the fluctuating workweek method, thereby eliminating any disincentives for employers to make such payments. Thus, employers that would meet the conditions of § 778.114 would be able to use the fluctuating workweek method when paying nonexempt employees bonuses and premiums as long as they include such payments in the calculation of the regular rate, unless they may be otherwise excluded under FLSA sections 7(e)(1)–(8).

IV. Proposed Regulatory Changes

The Department proposes to revise its existing fluctuating workweek regulation at § 778.114 to address these issues. First, the proposed rulemaking clarifies the regulation to expressly state that any bonuses, premium payments, or other additional pay of any kind are compatible with the fluctuating workweek method of compensation, and that such payments must be included in the calculation of the regular rate unless they are excludable under FLSA sections 7(e)(1)–(8). Second, the proposal adds examples to § 778.114(b) to illustrate these principles where an employer pays an employee, in addition to a fixed salary, (1) a nightshift differential and (2) a productivity bonus. Third, the proposed regulation revises the rule in a minor way to make it easier to read and understand. Revised § 778.114(a) would list each of the requirements for using the fluctuating workweek method, and duplicative text would be removed from revised § 778.114(c). Finally, the Department proposes to change the title of the regulation from ''Fixed salary for fluctuating hours'' to ''Fluctuating Workweek Method of Computing Overtime'' to better reflect the purpose of the subsection and to improve the ability of employers to locate the applicable rules.

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 and their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This NPRM does not require a collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA, or affect any existing collections of information. The Department welcomes comments on this determination.

VI. Executive Order 12866; Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review; and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

A. Introduction

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and therefore, subject to the requirements of the E.O. and OMB review. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million

[11] Supplemental pay's portion of total compensation for any occupation ranges from 0.3% (teachers) to 4.8% (production). *See* Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2019, Table 2, *https://www.bls.gov/news.release/pdf/ecec.pdf.*

[12] The Bureau of Labor Statistics estimated in 2009 that 42.35 percent of workers receive bonuses and 19.75 percent receive shift differentials. Bureau of Labor Statistics, A Look at Supplemental Pay: Overtime Pay, Bonuses, and Shift Differentials, Table 2, Mar. 25, 2009, *https://www.bls.gov/opub/mlr/cwc/a-look-at-supplemental-pay-overtime-pay-bonuses-and-shift-differentials.pdf.*

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 E.O. As described below, this proposed rule is not economically significant. The Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this NPRM, as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the rule.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where 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.

B. Overview of the Proposed Rule and Potential Affected Employees

This rule, if finalized as proposed, clarifies that bonus, premium, and any other supplemental payments are compatible with the fluctuating workweek method of calculating overtime pay. Current legal uncertainty regarding the compatibility of supplemental pay with the fluctuating workweek method deters employers from making such payments to employees paid under the fluctuating workweek method. The proposed rule would eliminate this deterrent effect, and thereby permit employers who compensate their employees under the fluctuating workweek method to pay employees a wider range of supplemental pay.

If the proposed rule were finalized, it would be clear to employers that employees paid under the fluctuating workweek method are eligible for all supplemental payments. The Department relied on data from the Current Population Survey (CPS) to estimate the total pool of employees who could possibly be affected.[13] In particular, the Department focused on full-time, nonexempt workers who report earning a fixed salary. The Department's regulations recognize only two ways that an FLSA-covered employer may pay a nonexempt employee a fixed salary.[14] First, under 29 CFR 778.113, the employer may pay a salary for a *specific number* of hours each week. For the purpose of this analysis, the Department assumes that a nonexempt worker paid under 29 CFR 778.113 would likely report having a ''usual'' number of hours worked in the CPS. Second, under 29 CFR 778.114, the employer pays a salary for *whatever number* of hours are worked—this is the fluctuating workweek method. For the purpose of this analysis, the Department assumes that a nonexempt worker paid under the fluctuating workweek method generally would not report having a ''usual'' number of hours worked each week, but rather would report working hours that ''vary'' from week to week. The Department estimated the number of such workers who could be compensated using the fluctuating workweek method by counting CPS respondents who: (1) Are employed at a FLSA-covered establishment; (2) are nonexempt from FLSA overtime obligations; (3) work full time at a single job; (4) reside in the District of Columbia or a state that permits the use of the fluctuating workweek method; [15] (5) are paid on a salary basis; and (6) work hours that ''vary'' from week to week. The Department calculated that 721,656 workers satisfy all these criteria based on 2018 CPS data. These workers are generally eligible to be paid under the fluctuating workweek method, but the Department lacks specific data as to how many are actually paid that way.

Using this group of workers to estimate the fluctuating workweek population may overstate the number of employees paid under the fluctuating workweek method because not all nonexempt and full-time CPS respondents who report earning a salary for working hours that ''vary'' from week to week are paid under the fluctuating workweek method. Some such respondents may actually be paid a salary for a specific number of hours under § 778.113, despite working fluctuating hours, and so classifying them as employees paid under the fluctuating workweek method would result in over-counting. Such an estimate may also undercount the number of employees paid under the fluctuating workweek method because the Department's methodology excludes all CPS respondents with ''usual'' hours from counting as an employee paid under the fluctuating workweek method. But an employee who works a ''usual'' number of hours may still be paid under the fluctuating workweek method if there is some weekly variation in the number of hours worked. Indeed, relying on 2018 CPS data, the Department estimates that an additional 675,130 nonexempt, full-time, and salaried workers report having a ''usual'' number of hours but routinely work hours that differ from that ''usual'' number. These additional workers are also eligible to be paid under the fluctuating workweek method, but the Department lacks data as to how many are actually paid that way.

Altogether, the total number of workers the Department estimates who may currently be paid under the fluctuating workweek method is about 1.4 million (721,656 workers who report their hours vary plus 675,130 workers who report having a ''usual'' number of hours but who work hours that differ from that number). For the purpose of this PRIA, the Department lacks data to determine how prevalent this compensation method actually is. Without data on the precise number, and for purposes of this illustrative analysis, the Department assumes that *half* of these workers are currently being paid using the fluctuating workweek method, meaning 698,393 workers could become eligible for a wider range of supplemental payments if the proposed rule were finalized.

The actual number may be higher or lower. The Department invites comment on this illustrative analysis, including any relevant data or information that may further inform the estimated

[13] The CPS is 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.

[14] Under either method of salary payment the employee is entitled to overtime premium pay of at least one and one-half times the regular rate. However, the method of calculating the overtime due differs because of the difference in what the salary payment is intended to cover.

[15] Currently four states generally prohibit the use of the fluctuating workweek method under state law: Alaska, California, Pennsylvania, and New Mexico. *See* 8 Alaska Admin. Code section 15.100(d)(3); Cal. Labor Code section 515(d); *Chevalier* v. *Gen. Nutrition Ctrs., Inc.,* 2017 PA Super 407, 177 A.3d 280 (Pa. Super. Ct. 2017), *appeal granted,* 189 A.3d 386 (Pa. 2018); *N.M. Dep't of Labor* v. *Echostar Commc'ns Corp.,* 134 P.3d 780, 783 (N.M. Ct. App. 2006).

number of employees paid under the fluctuating workweek method. The Department especially welcomes information from employers, employer organizations, employee organizations, or payroll processors who may have unique insight into the number of employees paid under this method.

The proposed clarification may also encourage some employers to switch their employees who are currently paid on an hourly basis to the fluctuating workweek method. The Department believes legal confusion over the last fifteen years, exacerbated by the 2011 Final Rule, likely caused some employers to stop using the fluctuating workweek method to compensate employees, and instead pay them on an hourly basis.[16] The Department applied the same estimation methodology it used to approximate the current number of employees paid under the fluctuating workweek method to approximate the number of such employees in previous years—going back to 2004—using CPS data from those years.[17]

The estimated percentage of U.S. workers compensated under the fluctuating workweek method has declined from 0.83 percent in 2004 to 0.45 percent in 2018. At least some portion of this decline likely may be attributed to the legal uncertainty discussed in greater detail above, but some may be attributable to unrelated causes.[18] For example, the Department recognizes that the total number of nonexempt FLSA full-time salaried workers decreased both in total number and also as a share of the employee population over this same period.[19] The Department further assumes that some employers who switched their employees away from the fluctuating workweek method due to legal uncertainty would be likely to switch those employees back to the fluctuating workweek. However, the Department lacks sufficient information to estimate the precise number of ''switchers'' due to elimination of legal uncertainty. The Department invites commenters to provide data or information on the number of employees who could have their compensation methods switched, or on the impact of this switch on their hours, roles, or responsibilities. The Department especially welcomes information from employers, employer organizations, employee organizations, or payroll processors who may have unique insight into the number of employees paid under this method.

C. Costs

The Department believes that the only likely costs attributable to this rulemaking are regulatory familiarization costs, which represent direct costs to businesses associated with reviewing changes to regulatory requirements caused by a final rule. Familiarization costs do not include recurring compliance costs that regulated entities would incur with or without a rulemaking. The Department calculated regulatory familiarization costs by multiplying the estimated number of establishments likely to review the proposed rule by the estimated time to review the rule and the average hourly compensation of a Compensation, Benefits, and Job Analysis Specialist.

To calculate costs associated with reviewing the rule, the Department first estimated the number of establishments likely to review the proposed rule, when finalized. The most recent data on private sector establishments at the time this NPRM was drafted are from the 2016 Statistics of U.S. Businesses (SUSB), which reports 7.8 million establishments with paid employees.[20]

The Department believes that each of the 7.8 million establishments will review the rule. All employers will give the proposed rule a cursory review, lasting no more than five minutes, to determine if they need to comply with the rule. Most employers will not spend any more time on the rule, because they do not have any employees compensated under the fluctuating workweek method. Additionally, the Department believes that employers currently using or interested in using the fluctuating workweek method to pay workers will give the proposed rule a more detailed review. The Department estimates that 698,393 workers are paid under the fluctuating workweek method, based on the 2018 CPS data. The Department uses this number to help estimate the number of establishments who will spend more time reviewing the rule. As previously discussed, the Department lacks data to identify the specific employers or employees who may switch to the fluctuating workweek given the new legal clarity, but estimates, for purposes of this cost analysis, that employers will switch additional employees to being paid under the fluctuating workweek method. This entire pool is approximately 0.45 percent of the 155.8 million workers in the United States. By assuming these workers are proportionally distributed among the 7.8 million establishments, the Department estimates approximately 35,100 establishments pay or are interested in paying employees using the fluctuating workweek method, and therefore, would review the proposed rule in greater detail. Because the proposed rule is a clarification that simplifies the interaction between the fluctuating workweek method and supplemental payments, the Department estimates it would take an average of 30 additional minutes (on top of the five minutes spent on an initial review) for each of these employers to review and understand the rule. Some might spend more than 30 additional minutes reviewing the proposed rule, while others might take less time; the Department believes that 30 minutes is a reasonable estimated average for all interested employers in light of the rule's simplicity.

Next, the Department estimated the hourly compensation of the employees who would likely review the proposed rule. The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (Standard Occupation Classification 13–1141), or an employee of similar status and comparable pay, would review the rule at each establishment. The median hourly wage of a Compensation, Benefits, and Job Analysis Specialist is $30.29.[21] The Department adjusted this base wage rate to reflect fringe benefits such as health insurance and retirement benefits, as well as overhead costs such as rent, utilities, and office equipment. The Department used a fringe benefits rate of 46 percent of the base rate[22] and an overhead rate of 17 percent of the base rate, resulting in a fully loaded hourly compensation rate for Compensation, Benefits, and Job Analysis Specialists of $49.37 = ($30.29 + ($30.29 × 46%) + ($30.29 × 17%)).

The Department estimates one-time regulatory familiarization costs in Year 1 of $32.8 million (= 35,100 establishments × 0.5 hours of review

[16] The Department believes that few employers would have switched employees from the fluctuating workweek method to a fixed salary for a specific number of hours under § 778.113 because those employees would have, by definition, worked hours that varied from week to week.

[17] The Department lacks the required CPS data from before 2004.

[18] *Compare, e.g., Wills,* 981 F. Supp. 2d at 256, *with Sisson,* 2013 WL 945372, at *1.

[19] From approximately 27.0 million in 2004 to 19.2 million in 2018.

[20] U.S. Census Bureau, 2016 Statistics of U.S. Businesses (SUSB) Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2016/econ/susb/2016-susb-annual.html.*

[21] Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, United States, *https://www.bls.gov/oes/current/oes_nat.htm.*

[22] The benefits-earnings ratio is derived from BLS's Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

time × $49.37 per hour + 7.8 million establishments × 0.083 hours of review time × $49.37 per hour), which amounts to a 10-year annualized cost of $3.73 million at a discount rate of 3 percent or $4.36 million at a discount rate of 7 percent. This proposed rule would not impose any new requirements on employers or require any affirmative measures for regulated entities to come into compliance; therefore, there are no other costs attributable to this proposed rule. The Department acknowledges that employers who do switch to the fluctuating workweek method may encounter adjustment costs as they make changes to their payroll systems. These costs were not captured here; however, because employers are not required to change their payment method (*i.e.,* their choice to switch is voluntary), and the Department assumes employers will make economically rational decisions, then such costs would reasonably be expected to be less than employers' combined cost savings and salary reductions. The Department invites comment on this analysis, including any relevant data or information that may further inform this cost estimate.

D. Cost Savings

The Department believes that this proposed rule could lead to three categories of potential cost savings: (1) The opportunity costs of previously forgone activities; (2) reduced management costs for non-hourly employees; and (3) reduced legal costs for employers. The Department uses the assumptions previously discussed in this PRIA to develop illustrative estimated cost savings. Based on these estimates, the Department believes total cost savings are likely to exceed regulatory familiarization costs.

First, the proposed rule would eliminate some of the opportunity costs in lost productivity resulting from employers' current inability to offer supplemental incentive pay to employees compensated under the fluctuating workweek method.[23] Legal uncertainty regarding the compatibility of such pay with the fluctuating workweek method prevents employers and employees from entering into certain mutually beneficial exchanges. For instance, an employer using the fluctuating workweek method could not offer supplemental incentive pay in exchange for performing undesirable duties. *See Dacar,* 914 F.3d at 926 (extra pay for ''offshore'' inspections invalidates fluctuating workweek method). The prohibition against such beneficial exchanges imposes economic costs, and the proposed rule, if finalized, would eliminate such costs.

The Department evaluates the potential scope of opportunity costs imposed by current legal uncertainty as the economic value of supplemental incentive pay prevented by current legal uncertainty. The Department assumes that employers currently follow the holdings of an increasing number of courts on the compatibility between supplemental payments and the fluctuating workweek method. These courts have held that productivity based payments, such as commissions, are compatible with the fluctuating workweek method. *See Lalli,* 814 F.3d at 8. The Department therefore assumes employers are not currently deterred from paying productivity based bonuses and premiums to employees under the fluctuating workweek method.[24] On the other hand, courts have held, and the 2011 Preamble may have led employers to believe, that shift differentials and hours-based payments—such as payments for holiday hours and hours spent working offshore—are not compatible with the fluctuating workweek method. *See Dacar,* 914 F.3d at 926. The Department believes that employers are currently deterred from making these types of payments to employees paid under the fluctuating workweek method. Finally, the Department believes legal uncertainty further deters employers from making supplemental payments that are neither productivity-based nor hours-based. This includes, for example, retention bonuses, referral bonuses, and safety bonuses that the Bureau of Labor Statistics categorize as ''nonproduction bonuses.'' [25]

The Department lacks sufficient data to predict the precise deadweight loss attributable to the present legal uncertainty including the economic value of work that fluctuating workweek employees do not perform because their employers cannot provide certain supplemental pay. However, after the rule change, if 70,000 workers who presently are compensated under the fluctuating workweek method—*i.e.,* one-tenth of the Department's estimate of 698,393—receive supplemental pay equal to approximately one-third the national average shift differential and nonproduction bonuses for work not presently performed, the full annual opportunity cost of lost productivity that the proposed rule would eliminate could exceed $60 million.[26] Appendix A contains a detailed illustrative analysis regarding possible ranges of potential opportunity cost eliminated and the critical variables upon which these estimates depend.

Ultimately, the Department lacks data to precisely measure the extent of overstating or understating its estimate of opportunity costs eliminated from the proposed rule. The Department welcomes comments providing data or information regarding the magnitude of possible opportunity costs avoided by this proposed rule, which may help the Department further quantify these effects in a Final Rule analysis. The Department especially welcomes information from employers, employer organizations, employee organizations, or payroll processors who may have unique insight into employees paid under the fluctuating workweek method.

Second, the proposed rule would reduce management costs for any employers that switch employees from hourly pay to the fluctuating workweek method. As explained above, the Department believes legal uncertainty caused some employers to stop paying employees using the fluctuating workweek method, and instead to pay them on an hourly basis. Since overtime pay premiums for hourly employees are constant (*i.e.,* their regular rate does not decrease as more overtime hours are worked), these employers may incur increased managerial costs because they may spend more time developing work

[23] ''[C]ost savings should include the full opportunity costs of the previously forgone activities.'' Office of Management and Budget, ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs,' '' Apr. 5, 2017, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf.* Some economists refer to this amount as deadweight loss or ''the sum of consumer and producer surplus.'' *Id.*

[24] The Department understands that this assumption may not perfectly reflect reality because many employers using the fluctuating workweek method may presently be deterred from paying production based bonuses and premiums, especially outside of jurisdictions in which such supplemental pay have been expressly held to be compatible with the fluctuating workweek method. By assuming all employers are paying production bonuses despite this concern, the Department's illustrative estimate may be understating the economic cost of current legal uncertainty. The Department welcomes comments providing data or information regarding whether employers using the fluctuating workweek are currently paying production based bonuses and premiums, such as commissions.

[25] Bureau of Labor Statistics, Fact Sheet for the June 2000 Employment Cost Index Release (2000), at 1, *https://www.bls.gov/ncs/ect/sp/ecrp0003.pdf.* As the name implies, nonproduction bonuses do not include productivity based pay, such as commissions, that courts generally find to be compatible with the fluctuating workweek method.

[26] BLS estimates that average hourly shift differential and nonproduction bonuses are 3.4% of hourly pay and the 698,393 workers that the Department estimates are paid under the fluctuating workweek method earn an average annual salary of $49,282.

schedules and closely monitoring an employee's hours to minimize or avoid overtime pay. For example, the manager of an hourly worker may have to assess whether the marginal benefit of scheduling the worker for more than 40 hours exceeds the marginal cost of paying the overtime based on the higher hourly rate. But such assessment is less necessary for an employee paid under the fluctuating workweek method because the employee's regular rate decreases with each additional overtime hour, reducing the overtime premium as a share of compensation.

There was little precedent or data to aid in evaluating these managerial costs. With the exception of the 2016 and 2019 overtime rulemaking efforts, the Department has not estimated managerial costs of avoiding overtime pay. *See* 81 FR 32391, 32477 (May 23, 2016); 84 FR 10900, 10932 (Mar. 29, 2019). Nor has the Department found such estimates after reviewing the literature. The Department therefore refers to the methodology used in the 2019 overtime rulemaking to produce a qualitative analysis of potential additional cost savings.

Under the overtime rulemaking methodology, the Department assumed a manager spends ten minutes per week scheduling and monitoring a newly exempt employee to avoid or minimize overtime pay. And employers may be able to avoid at least some of this effort if the employee were instead paid under the fluctuating workweek method because the marginal cost of paying overtime would be lower. While, the Department does not estimate the precise number of hourly workers who would switch from hourly pay to the fluctuating workweek method if the proposed rule were finalized, the Department believes that management costs may be reduced for every worker who is switched because their managers may spend less time managing their schedules. If, hypothetically, 150,000 workers were switched, employers might reduce their annual managerial costs by over $ 66 million.[27]

The Department welcomes data or information regarding the number of employees who could have their compensation method switched, how employers would manage their hours after switching, or other relevant factors that would help the Department further quantify cost savings. The Department especially welcomes information from employers, employer organizations, or payroll processors who may have unique insight into employees paid under the fluctuating workweek method.

Third, the clarifying language and updated examples included in this NPRM may reduce the amount of time employers spend attempting to understand their obligations under the law, after an initial one-time rule familiarization. For example, employers interested in offering supplemental payments to employees compensated under the fluctuating workweek method would know immediately from the language proposed for inclusion in § 778.114 that such payments will be compatible with the fluctuating workweek method, thereby obviating further legal research and analysis on the issue. The Department does not have data to estimate the precise amount of cost savings attributable to reduced need for legal research and analysis, and instead provides an example to illustrate the potential for such savings.

If the additional legal clarity reduces the annual amount of legal review by just one hour for each employer that pays or is interested in paying employees using the fluctuating workweek method, the Department calculates potential cost savings of up to $4.7 million. The Department obtained this illustrative estimate by first calculating the hourly cost of a lawyer (Standard Occupation Classification 23–1011). The median wage of a lawyer is $58.13,[28] and the Department adjusted this to $94.75 per hour to account for fringe benefits and overhead.[29] The fully loaded hourly compensation rate of $94.75 is then multiplied by the 35,100 establishments that the Department estimates pay or may be interested in paying employees using the fluctuating workweek method, resulting in a product of $ 3.3 million per year.[30] As noted above, this figure is an illustrative example of potential annual cost savings due to reducing legal-review burdens, and the Department welcomes comments providing data or information on this topic so that the Department accurately quantify these effects in a Final Rule analysis.

Even though the Department cannot quantify the precise amount of total cost savings, it expects cost savings to outweigh regulatory familiarization costs. Unlike one-time familiarization costs, the potential cost savings described in this section would continue into the future, saving employers valuable time and resources. This proposal also offers increased flexibility to employers in the way that they compensate their employees. However, the Department is unable to precisely quantify cost savings and other potential effects of the proposed rule due to a lack of data. The Department welcomes comments providing data or information regarding possible cost savings attributable to this proposed rule, which may help the Department further quantify these effects in a Final Rule analysis. The Department especially welcomes information from employers, employer organizations, employee organizations, or payroll processors who may have unique insight into employees paid under the fluctuating workweek method.

E. Transfers

Transfer payments occur when income is redistributed from one party to another. The Department believes the proposed rule, if finalized, may cause transfer payments to flow from employers to employees and may also cause transfer payments to flow from employees to employers. The incidence, magnitude, and ultimate beneficiaries of such transfers is unknown.

The Department lacks data to estimate the precise amount and composition of the supplemental incentive pay that employers may now offer, the extent to which employers may restructure compensation packages, the method by which employers who switch employees to a fluctuating workweek may allocate additional compensation, and the allocation of economic gains between employees and employers. The Department welcomes comments providing data or information regarding how employers will structure employment compensation following this rulemaking, as well as how employers may change employees' hours or responsibilities. The Department especially welcomes information from employers, employer organizations, employee organizations, employees, or payroll processors who may have unique insight into employees paid under the fluctuating workweek method and the management practices

[27] This illustrative analysis assumes: Ten minutes per week per worker, fifty-two weeks per year, multiplied by a hypothetical number of new employees paid under the fluctuating workweek method, multiplied by the full-loaded median hourly wage for a manager ($31.18 + $31.18(0.46) + $31.18(0.17) = $50.92). This wage is calculated as the median hourly wage in the pooled 2018/19 CPS MORG data for workers in management occupations (excluding chief executives).

[28] Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, United States, *https://www.bls.gov/oes/current/oes_nat.htm.*

[29] The Department used a fringe benefits rate of 46 percent of the base rate and an overhead rate of 17 percent of the base rate, resulting in a fully loaded hourly compensation rate of $94.75 = ($58.13 + ($58.13 × 0.46) + ($58.13 × 0.17)).

[30] This number is discussed in greater detail in the Costs section, above.

employed by companies using the fluctuating workweek method.

F. Benefits

The Department believes the proposed clarification would reduce avoidable disputes and litigation regarding the compatibility between supplemental pay and the fluctuating workweek method. As noted above, there is no uniform consensus among Federal courts as to whether and what types of supplemental pay is permitted. The Department believes this uncertain legal environment generates a substantial amount of avoidable disputes and litigation. The proposed rule would provide a simple standard that permits all supplemental pay under the fluctuating workweek method, and therefore should reduce unnecessary disputes and litigation.[31] The Department lacks data to quantify this benefit, and welcomes data and information on the amount of unnecessary disputes and litigation that would be avoided if the proposed rule were finalized. The Department especially welcomes information from employers, employer organizations, or payroll processors who may have unique insight into employees paid under the fluctuating workweek method.

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 (March 29, 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. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

This proposed rule would not impose any new requirements on employers or require any affirmative measures for regulated entities to come into compliance. Therefore, there are no other costs attributable to this deregulatory proposed rule other than regulatory familiarization costs. As discussed above, the Department calculated the familiarization costs for both the estimated 7.8 million private establishments in the United States and for the estimated 50,064 establishments that pay or are interested in paying employees using the fluctuating workweek method. The Department estimated the one-time familiarization cost for each of the 7.8 million establishments—which would give the proposed rule a cursory review—is $4.11. And the one-time familiarization cost for each of the 35,100 establishments that employ or are interested in employing employees paid under the fluctuating workweek method—which would closely review the proposed rule—is $24.69. Estimated familiarization costs would be trivial for small business entities, and would be well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses.

The Department believes that this proposed rule would achieve long-term cost savings that outweigh initial regulatory familiarization costs. For example, the Department believes that clarifying the confusing fluctuating workweek regulation and adding updated examples should reduce compliance costs and litigation risks that small business entities would otherwise continue to bear. The proposed rule would also reduce administrative costs of small businesses that respond by switching hourly employees to the fluctuating workweek method. The proposed rule further enables a small business to offer employees paid under the fluctuating workweek method supplemental incentive pay in exchange for certain productive behavior, such as working nightshifts or performing undesirable duties. The business would offer such supplemental pay only if the benefits of the incentivized behavior exceed the cost of payments. Because the vast majority of businesses, including small businesses, do not pay workers using the fluctuating workweek method,[32] the Department believes such benefits will be limited to few small businesses. Based on this determination, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires that agencies 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. 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. Please see Section VI for an assessment of anticipated costs and benefits to the private sector.

IX. Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and 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.

Appendix A

This appendix presents the Department's illustrative analysis of the opportunity cost of work that is not performed because employers are not permitted to provide certain types of supplemental incentive pay to fluctuating workweek employees. The proposed rule would reduce such opportunity costs. What follows is discussion of two approaches to estimating these effects.

I. Method One: Using Supplemental Pay Data

The Department's first methodology consists of three steps. First, the Department estimates the amount of additional supplemental pay that the average fluctuating workweek employee could receive if employers believed all supplemental payments were compatible with the fluctuating workweek method. Second, the

[31] The costs of such disputes and litigation are not insignificant, but are not estimated here nor included in the projected regulatory cost savings.

[32] The Department of Labor estimates that only 0.45% of U.S. workers are compensated using fluctuating workweek method.

Department estimates the economic value of the work that such supplemental pay could have incentivized—this represents the opportunity cost per workers resulting from legal uncertainty. Third, the Department multiplies the opportunity cost per worker by the estimated number of workers who are potentially compensated under the fluctuating workweek method.[33]

1. Average Supplemental Pay Being Prevented

As discussed in the Preamble, the Department assumes that employers currently use production-based supplemental pay—such as commissions—to incentivize employees, but they presently are deterred from using other types of supplemental pay. If this NPRM were finalized as proposed, the Department expects some employers may begin to use other types of supplemental pay, including nonproduction bonuses and shift differentials, to incentivize employees to perform economically valuable tasks.

The Bureau of Labor Statistics (BLS) provides estimates on nonproduction bonuses, which include, *e.g.,* safety bonuses, holiday pay, attendance pay, and referral bonuses.[34] BLS also provides separate estimates of shift differentials that employees receive nationwide. Shift differentials and nonproduction bonuses comprise approximately 3.4 percent of the salaries and wages of workers nationwide.[35] The Department believes this 3.4 percent national average may be a useful starting point to estimate the amount of supplemental incentive pay that current legal uncertainty could prevent.

The Department recognizes that 3.4 percent of salary may overstate or understate the average supplemental pay that legal uncertainty prevents fluctuating workweek employees from receiving. For example, the Department assumes employers using the fluctuating workweek method currently are unable to directly incentivize certain productive tasks with supplemental pay. But some employers may be indirectly (and less efficiently) incentivizing such behavior, *e.g.,* encouraging holiday work by increasing the base salary of all employees and requiring employees to work a holiday as needed rather than paying a lower salary to all employees and paying a premium only to employees who work that particular holiday. If so, the amount of incentive pay prevented by current legal uncertainty may be less than the 3.4 percent of salary. Conversely, the amount of lost incentive pay may be higher than 3.4 percent of salary because that percentage does not include production-based incentive pay. The Department assumes employers using the fluctuating workweek method currently pay production-based bonuses, such as commissions, to incentivize productive behavior. But case law permitting this practice extends only to two circuits and some district courts,[36] and some employers outside those jurisdictions may be deterred from paying production based incentive pay due to legal uncertainty.[37] If so, the amount of lost incentive pay for productive behavior due to legal uncertainty may be higher than 3.4 percent of salary.

Ultimately, the Department lacks sufficient data to precisely measure the extent of overstatement or understatement. In the presentation that follows, the Department assumes that the average fluctuating workweek employee would receive less than the national average of 3.4 percent of salary if employers were assured that such payments were compatible with the fluctuating workweek method. This appendix presents two scenarios regarding the average supplemental pay that that current legal uncertainty may prevent fluctuating workweek employees from receiving:

- Scenario 1 assumes supplemental pay being prevented equals 1 percent of salary; and
- Scenario 2 assumes supplemental pay being prevented equals 2 percent of salary.

As discussed in the preamble, the Department uses CPS data to identify approximately 1.4 million workers who may currently be paid under the fluctuating workweek method. CPS data indicate that these 1.4 million workers earn an average annual salary of $49,282. Under Scenario 1, the average amount of supplemental pay per employee that legal uncertainty prevents is $492.82 (= $49,282 × 1%) per year. Under Scenario 2, the average amount per employee is $985.64 (= $49,282 × 2%) per year. On a weekly basis, these scenarios would result in an employee receiving approximately $9.48 or $18.95 in supplemental pay.

2. Average Opportunity Cost

The above estimates for Scenarios 1 and 2 represent potential supplemental incentive payments that employers were deterred from paying an average employee compensated under the fluctuating workweek method. And since the employee did not receive this amount, the Department assumes he or she completed fewer productive tasks that such pay would have incentivized, such as working nights or weekends or performing other undesirable duties.

The estimates under Scenarios 1 and 2 represent the worker's share of the total economic cost of lost productivity. The Department assumes the worker's share of this cost is the same as labor's share of national income, which BLS estimates was 56.4 percent in 2018 (the most recent year of data available at publication).[38] The full, economy-wide annual opportunity cost of lost productivity that the proposed rule would eliminate is therefore equal to the lost supplemented pay under Scenarios 1 and 2 divided by 56.4 percent. Under Scenario 1, this amounts to $873.79 (= 492.82 ÷ 56.4%) per employee compensated under the fluctuating workweek method. Annual opportunity cost eliminated under Scenario 2 is $1,747.59 (= 985.64 ÷ 56.4%) per such employee.

3. Total Opportunity Cost Eliminated

The Department multiplied the opportunity cost per employee by the estimated number of fluctuating

[33] This analysis does not attempt to evaluate whether and to what extent some employees not presently compensated under the fluctuating workweek method might be shifted to the fluctuating workweek method from their present method of compensation.

[34] Bureau of Labor Statistics, Fact Sheet for the June 2000 Employment Cost Index Release (2000), at 1, *https://www.bls.gov/ncs/ect/sp/ecrp0003.pdf*; *see also* BLS, Employee Benefits Survey, March 2017, *https://www.bls.gov/ncs/ebs/benefits/2017/ownership/govt/table43a.htm.* As the name implies, nonproduction bonuses do not include productivity based pay, such as commissions, that some courts have found to be compatible with the fluctuating workweek method. Approximately one-third of U.S. workers have access to nonproduction bonuses in 2017. *Id.*

[35] BLS estimates average wages and salaries of private industry workers to be $24.17. And their average hourly shift differential and nonproduction bonus adds up to $0.81, which represents 3.4% of hourly pay. Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2019, Table 1, *https://www.bls.gov/news.release/archives/ecec_06182019.pdf.* This figure represents the national average of all workers: Some workers may receive little or no shift differentials and nonproduction bonuses while other may receive substantially higher shift differentials and nonproduction bonuses than the national average.

[36] *See, e.g., Lalli,* 814 F.3d at 8; *Dacar,* 914 F.3d at 926; *Wills,* 981 F. Supp. 2d at 256.

[37] For instance, the 2011 Preamble's statement that ''bonus and premium payments . . . are incompatible with the fluctuating workweek method of computing overtime under section 778.114'' does not, on its face, permit employers to pay commissions and other production-based bonuses under the fluctuating workweek method. *See also Sisson,* 2013 WL 945372, at *6 (commissions not permitted under fluctuating workweek method).

[38] Bureau of Labor Statistics, Labor Productivity and Costs, *https://www.bls.gov/lpc/special_requests/msp_dataset.zip.*

workweek employees to estimate the potential total reduction in opportunity cost from the proposed rule. As discussed in the Preamble, the Department estimated there are up to 1.4 million workers who may currently be paid under the fluctuating workweek method and further assumed that half—698,383 workers—are actually being paid under that method. But, as the Preamble noted, the actual number may be higher or lower. To account for the uncertainty in the actual number of fluctuating workweek employees who would receive supplemental pay under the proposed rule, the Department estimated the total reduction in opportunity cost under three different scenarios:

- Scenario A uses half of the Department's estimate of fluctuating workweek employees, or 349,192 employees;
- Scenario B uses one quarter of the Department's estimate, or 174,596 employees; and
- Scenario C uses one tenth of the Department's estimate, or 69,838 employees.

Scenarios A–C reflect different assumptions regarding the number of fluctuating workweek employees who may receive supplemental pay, while Scenarios 1 and 2 reflect different assumptions regarding the amount of supplemental pay—and by extension productive activity—prevented by current legal uncertainty. These create six different combinations, A1 thorough C2, each presenting a different estimate for the total opportunity cost that the proposed rule would eliminate. The table below summarizes these possibilities:

TABLE 1—OPPORTUNITY COST ELIMINATED

		Scenario 1	Scenario 2
		1% Suppl. Pay	2% Suppl. Pay
Scenario A	349,192 Workers	$305,121,551	$610,243,103
Scenario B	174,596 Workers	152,560,776	305,121,551
Scenario C	69,838 Workers	61,024,310	122,048,621

As Table 1 shows, the estimated opportunity cost that the proposed rule could eliminate depends upon the number of workers being compensated under the fluctuating workweek method and the amount of supplemental pay that current legal uncertainty prevents such workers from receiving. At the low end is Scenario C1—representing the lowest calculated number of fluctuating workweek employees and the lowest calculated amount of supplemental pay—which indicates that opportunity cost that could be eliminated is approximately $61 million.[39] And at the high end is Scenario A2—representing the highest estimate of affected fluctuating workweek employees and the highest amount of supplemental pay—which indicates the opportunity cost that could be eliminated by the proposed rule is approximately $610 million.

The Department lacks sufficient data and information necessary to precisely predict which scenario is most plausible and thus to estimate the potential reduction in opportunity cost. Accordingly, the Department invites comment on this analysis, including any relevant data or information on the Department's assumptions regarding: (1) The estimated number of employees paid under the fluctuating workweek method; and (2) the amount of supplemental pay that current legal uncertainty prevents such employees from receiving. The Department especially welcomes information from employers, employer organizations, employee organizations, or payroll processors who may have unique insight into employees paid under the fluctuating workweek method.

II. Method Two: Comparison With Managerial Costs

In the absence of the fluctuating workweek NPRM, employers whose employees work irregular hours each week have different compensation options. One option is to pay workers an hourly wage with premiums (for hazard duty, graveyard shifts, and so forth), another option is to pay a salary without such premiums (another is to pay using the fluctuating workweek method, but without such premiums). Comparing these two options indicates a tradeoff between employer surplus—associated with the ability to enhance productivity by paying premiums—and reduced managerial costs—associated with paying salaries, per the Preamble's portion of this RIA. Hence, the managerial cost savings can provide a bound on the employer surplus effects that can be achieved by eliminating this tradeoff. Multiplying managerial costs for waged workers of $441.31 per year (=$50.92 × 52 weeks × 1/6 hour per week) by the estimated 698,393 fluctuating workweek employees yields an estimate of $308 million as the upper bound on the proposed rule's employer surplus effects.[40] Worker surplus would likely be of similar magnitude, thus putting the overall upper bound on rule-induced deadweight loss reduction at approximately $0.6 billion. If there were productivity gains from switching employees into the fluctuating workweek method, this bound could rise. As with Method One, the Department invites comment on this analysis.

Signed at Washington, DC, this 28th day of October, 2019.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

List of Subjects in 29 CFR Part 778

Wages.

For the reasons set forth above, the Department proposes to amend title 29, part 778, of the Code of Federal Regulations as follows:

PART 778—OVERTIME COMPENSATION

■ 1. The authority citation for part 778 continues to read as follows:

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* Section 778.200 also issued under Pub. L. 106–202, 114 Stat. 308 (29 U.S.C. 207(e) and (h)).

■ 2. Revise § 778.114 to read as follows:

[39] The $61 million estimate should not be interpreted as a true lower bound. Indeed, a review of public comments on related rulemakings yields only a few muted requests for the fluctuating workweek policy to be revised—potentially indicating that the associated current deadweight loss is of limited magnitude.

[40] The estimate is an upper bound both due to diminishing returns and because it does not account for other potential employer choices (*e.g.,* paying salaries with premiums, while enduring uncertainty as to the arrangement's legality) that they would only pursue if less costly than the two options previously discussed.

§ 778.114 Fluctuating workweek method of computing overtime.

(a) The fluctuating workweek may be used to calculate overtime compensation for a nonexempt employee if the following conditions are met:

(1) The employee works hours that fluctuate from week to week;

(2) The employee receives a fixed salary that does not vary with the number of hours worked in the workweek, whether few or many;

(3) The amount of employee's fixed salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours the employee works is greatest;

(4) The employee and the employer have a clear and mutual understanding that the fixed salary is compensation (apart from overtime premiums and any bonuses, premium payments, or other additional pay of any kind not excludable from the regular rate under section 7(e)(1) through (8) of the Act) for the total hours worked each workweek regardless of the number of hours; and

(5) The employee receives overtime compensation, in addition to such fixed salary and any bonuses, premium payments, and additional pay of any kind, for all overtime hours worked at a rate of not less than one-half the employee's regular rate of pay for that workweek. Since the salary is fixed, the regular rate of the employee will vary from week to week and is determined by dividing the amount of the salary and any non-excludable additional pay received each workweek by the number of hours worked in the workweek. Payment for overtime hours at not less than one-half such rate satisfies the overtime pay requirement because such hours have already been compensated at the straight time rate by payment of the fixed salary and non-excludable additional pay. Payment of any bonuses, premium payments, and additional pay of any kind is not incompatible with the fluctuating workweek method of overtime payment, and such payments must be included in the calculation of the regular rate unless excludable under section 7(e)(1) through (8) of the Act.

(b) The application of the principles in paragraph (a) of this section may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose work hours never exceed 50 hours in a workweek, and whose salary of $600 a week is paid with the understanding that it constitutes the employee's compensation (apart from overtime premiums and any bonuses, premium payments, or other additional pay of any kind not excludable from the regular rate under section 7(e)(1) through (8)) for all hours worked in the workweek.

(1) *Example.* If during the course of 4 weeks this employee works 37.5, 44, 50, and 48 hours, the regular rate of pay in each of these weeks is $16, $13.64, $12, and $12.50, respectively. Since the employee has already received straight time compensation for all hours worked in these examples, only additional half-time pay is due. For the first week the employee is owed $600 (fixed salary of $600, with no overtime hours); for the second week $627.28 (fixed salary of $600, and 4 hours of overtime pay at half times the regular rate of $13.64 for a total overtime payment of $27.28); for the third week $660 (salary compensation of $600, and 10 hours of overtime pay at half times the regular rate of $12 for a total overtime payment of $60); for the fourth week $650 (fixed salary of $600, and 8 overtime hours at half times the regular rate of $12.50 for a total overtime payment of $50).

(2) *Example.* If during the course of 4 weeks this employee works 37.5, 44, 50, and 48 hours and 4 of the hours the employee worked each week were nightshift hours compensated at a premium rate of an extra $5 per hour, the employee's total straight time earnings would be $620 (fixed salary of $600 plus $20 of non-overtime premium pay for the 4 nightshift hours). In this case, the regular rates of pay in each of these weeks is $16.53, $14.09, $12.40, and $12.92, respectively, and the employee's total compensation would be calculated as follows: For the first week the employee is owed $620 (fixed salary of $600 plus $20 of non-overtime premium pay, with no overtime hours); for the second week $648.20 (fixed salary of $600 plus $20 of non-overtime premium pay, and 4 hours of overtime at half times the regular rate of $14.09 for a total overtime payment of $28.20); for the third week $682 (fixed salary of $600 plus $20 of non-overtime premium pay, and 10 hours of overtime at half times the regular rate of $12.40 for a total overtime payment of $62); for the fourth week $671.68 (fixed salary of $600 plus $20 of non-overtime premium pay, and 8 hours of overtime at half times the regular rate of $12.92 for a total overtime payment of $51.68).

(3) *Example.* If during the course of 4 weeks this employee works 37.5, 44, 50, and 48 hours and the employee received a $100 productivity bonus each week, the employee's total straight time earnings would be $700 (fixed salary of $600 plus $100 productivity bonus). In this case, the regular rate of pay in each of these weeks is $18.67, $15.91, $14, and $14.58, respectively, and the employee's total compensation would be calculated as follows: For the first week the employee is owed $700 (fixed salary of $600 plus $100 productivity bonus, with no overtime hours); for the second week $731.84 (fixed salary of $600 plus $100 productivity bonus, and 4 hours of overtime at half time the regular rate of $15.91 for a total overtime payment of $31.84); for the third week $770 (fixed salary of $600 plus $100 productivity bonus, and 10 hours of overtime at half times the regular rate of $14, for a total overtime payment of $70); for the fourth week $758.32 (fixed salary of $600 plus $100 productivity bonus, and 8 hours of overtime at half times the regular rate of $14.58 for a total overtime payment of $58.32).

(c) Typically, the salaries described in paragraph (a) of this section are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where the conditions for the use of the fluctuating workweek method of overtime payment are present, the Act, in requiring that ''not less than'' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for overtime hours at a rate no greater than that which the employee receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

[FR Doc. 2019–23860 Filed 11–4–19; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0830]

RIN 1625–AA87

Security Zone; Super Bowl 2020, Bayfront Park, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary security zone over certain navigable waters of Biscayne Bay in connection with Super

Bowl 2020 events in Miami, Florida. The temporary security zone is necessary to protect official party, executives, public, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Anchoring, or remaining within the security zone would be prohibited unless authorized by the Captain of the Port Miami (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 5, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0830 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard at 305–535–4317 or by email: *Omar.Beceiro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The City of Miami will be hosting Super Bowl LIV (54) in February 2020. Additionally, several venues and hotels in the City of Miami downtown area will host Super Bowl-related events during the week preceding the Super Bowl, which is scheduled for February 2, 2020. Venues include Bayfront Park, Adrienne Arsht Center for the Performing Arts, and JW Marriott Marquis Hotel. The Coast Guard anticipates these various events will draw large crowds of people, executives, official party, etc. and present a security concern since the venues may be accessed from or are in close proximity to the waterfront, Biscayne Bay. The COTP has determined the ease of waterfront access to the various venues hosting Super Bowl events present a security concern for attendees.

The purpose of this rulemaking is to ensure the security of the public, executives, official party and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary security zone to be enforced 24 hours a day beginning at 8:00 a.m. on January 26, 2020 until 8:00 a.m. on February 3, 2020. The temporary security zone would cover all navigable waters of Biscayne Bay from approximately Venetian Causeway south to and including a portion of the Miami River. The duration of the temporary security zone is intended to ensure the security of the public, executives, official party and surrounding waterway before, during, and after the various Super Bowl-related events in the Downtown area of Miami, Florida.

All persons and vessels are required to transit the security zone at a steady speed and may not slow down, stop, or anchor except in the case of unforeseen mechanical failure or other emergency. Any persons or vessels forced to slow or stop in the zone shall immediately notify the COTP Miami via VHF channel 16.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the security zone. The security zone will only affect a small area of Biscayne Bay near Bayfront Park in the Port of Miami for approximately eight days. Vessel traffic; however, will not be impeded by the temporary security zone. Vessels will be able to transit the security zone along the Intracoastal Waterway with the only restriction being the inability to stop or anchor within the zone. Moreover, upon activating the security zone, the Coast Guard will notify the local maritime community through various means including, Local Notice Mariners and Broadcast Notice to Mariners issued on VHF–FM marine radio channel 16.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary security zone lasting approximately eight days that would prohibit vessels from stopping or anchoring within the zone. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A draft Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0830 to read as follows:

§ 165.T07–0830 Security Zone; Super Bowl 2020, Bayfront Park, Miami, FL

(a) Regulated Areas: The following is a temporary security zone:

(1) All waters of Biscayne Bay within the following points: Beginning at Point 1 in position 25°47′13″ N, 80°11′6″ W; thence east to Point 2 in position 25°47′13″ N, 80°10′48″ W; thence south to Point 3 in position 25°46′11″ N, 80°10′48″ W; thence west to Point 4 in position 25°46′11″ N, 80°11′27″ W; thence north to Point 5 in position 25°46′15″ N, 80°11′27″ W; thence east to Point 6 in position 25°46′15″ N, 80°11′6″ W; thence back to origin at Point 1.

(b) Definition: The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the security zone.

(c) Regulations:

(1) All persons and vessels are required to transit the security zone at a steady speed and may not slow down, stop, or anchor except in the case of unforeseen mechanical failure or other emergency. Any persons or vessels forced to slow or stop in the zone shall immediately notify the Captain of the Port Miami via VHF channel 16.

(2) Persons who must notify or request authorization from the Captain of the Port Miami may do so by telephone at (305) 535–4472, or may contact a designated representative via VHF radio on channel 16.

If authorization to anchor, or remain within the security zone is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of

the Captain of the Port Miami or the designated representative.

(d) Enforcement Period: This rule will be enforced from 8:00 a.m. on January 26, 2020 through 8:00 a.m. on February 3, 2020.

Dated: October 31, 2019.

J.F. Burdian,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2019–24133 Filed 11–4–19; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 19–290; DA 19–1027]

Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), announce an auction of certain FM broadcast construction permits. This public notice also seeks comment on competitive bidding procedures and proposed minimum opening bid amounts for Auction 106.

DATES: Comments are due on or before November 6, 2019, and reply comments are due on or before November 20, 2019. Bidding in Auction 106 is scheduled to begin on April 28, 2020.

ADDRESSES: Interested parties may submit comments in response to the *Auction 106 Comment Public Notice,* identified by AU Docket No. 19–290, by any of the following methods:

- *FCC's Website:* Federal Communications Commission's Electronic Comment Filing System (ECFS): *http://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* FCC Headquarters, 445 12th Street SW, Room TW–A325, Washington, DC 20554.
- *People With Disabilities:* Contact the Consumer & Governmental Affairs Bureau to request reasonable accommodations (accessible format documents (braille, large print, electronic files, audio format), sign language interpreters, CART, etc.) by email to *FCC504@fcc.gov* or call 202–418–0530 (voice), 202–418–0432 (TTY).

For detailed instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the OEA Auctions Division at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For FM service questions, Lisa Scanlan, Tom Nessinger or James Bradshaw in the MB Audio Division at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 106 Comment Public Notice,* released October 10, 2019. The complete text of this document, including attachment, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The *Auction 106 Comment Public Notice* and related documents also are available on the internet at the Commission's website: *www.fcc.gov/auction/106,* or by using the search function for AU Docket No. 19–290 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

All filings in response to the *Auction 106 Comment Public Notice* must refer to AU Docket No. 19–290. Interested parties are strongly encouraged to file comments electronically, and to submit electronically an additional copy of all comments and reply comments to the following address: *auction106@fcc.gov.*

Electronic Filers: Comments may be filed electronically using the internet by accessing ECFS: *www.fcc.gov/ecfs.* Follow the instructions for submitting comments.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. ET. All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

I. Construction Permits in Auction 106

1. Auction 106 will offer 130 construction permits in the FM broadcast service for 130 FM allotments, including 34 construction permits that were offered but not sold or were defaulted upon in prior auctions. Attachment A of the *Auction 106 Comment Public Notice* lists these specific vacant FM allotments added to the Table of FM Allotments, 47 CFR 73.202(b), and assigned at the indicated communities. Attachment A also lists the reference coordinates for each vacant FM allotment. Each Auction 106 applicant may submit in its short-form application (FCC Form 175) a set of preferred site coordinates for any of its selected construction permits as an alternative to the reference coordinates for that vacant FM allotment.

2. Under established Commission policies, an applicant may apply for any vacant FM allotment listed in Attachment A. If two or more FCC Forms 175 specify the same FM allotment, they will be considered mutually exclusive, and the construction permit for that FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit in Auction 106, that applicant is required to submit a bid in order to obtain the construction permit.

II. Proposed Bidding Procedures

3. *Simultaneous Multiple Round Auction Design.* This public notice proposes to auction all construction permits included in Auction 106 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. OEA and MB seek comment on this proposal.

4. *Bidding Rounds.* The Commission will conduct Auction 106 over the internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line.

5. Auction 106 will consist of sequential bidding rounds, each

followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding.

6. OEA and MB seek comment on the proposal to retain the discretion to adjust the initial bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and change their bidding strategies. Under this proposal, such adjustments may include the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement or bid amount parameters, or by using other means.

7. *Stopping Rule.* To complete bidding in the auction within a reasonable time, pursuant to 47 CFR 1.2104(e), it is proposed to employ a simultaneous stopping rule approach for Auction 106, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close on all construction permits after the first round in which no bidder submits any new bid, applies a proactive waiver, or, if bid withdrawals are permitted in this auction, withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Thus, under the proposed simultaneous stopping rule, bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

8. Further, the following stopping options are proposed as alternatives during Auction 106. (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bid on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) The auction would close for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bid on a construction permit that is not FCC held, a construction permit that does not already have a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit would not keep the auction open under this modified stopping rule. (3) Use a modified version of the simultaneous stopping rule that combines options (1) and (2) above. (4) The auction would close after a specified number of additional rounds to be announced in advance in the FCC auction bidding system. If this special stopping rule is invoked, bids are accepted in the specified final round(s), after which the auction would close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

9. These options would be exercised only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, it is likely that there will be an attempt to change the pace of the auction by changing the number of bidding rounds per day or the minimum acceptable bids. OEA and MB propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. OEA and MB seek comment on these proposals. Commenters should provide specific reasons for supporting or objecting to these proposals.

10. *Information Relating to Auction Delay, Suspension or Cancellation.* Pursuant to 47 CFR 1.2104(i), OEA and MB may delay, suspend, or cancel bidding in the auction in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. Auction 106 participants will be notified of any such delay, suspension or cancellation by public notice or through the FCC auction bidding system's messages function. If bidding is delayed or suspended, OEA and MB may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. OEA and MB will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. OEA and MB seek comment on these proposals.

11. *Upfront Payments and Bidding Eligibility.* As specified in 47 CFR 1.2106, it is proposed that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. Upfront payments are refundable deposits that are related to the specific construction permits being auctioned and protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the bidding.

12. OEA and MB seek comment on the upfront payment amounts proposed in Attachment A of the *Auction 106 Comment Public Notice,* which were developed by taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits.

13. OEA and MB request comment on the proposal that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. Under this proposal, each construction permit will be assigned a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the *Auction 106 Comment Public Notice.* The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit in Auction 106, such a bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units.

14. *Activity Rule.* To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. OEA and MB request comment on the proposal for a single stage auction with the following activity requirement: In each bidding round, a bidder desiring to maintain its current bidding eligibility is required to be active on 100% of its bidding eligibility. Thus, the activity requirement would be satisfied when a bidder has bidding activity on construction permits with bidding units that total 100% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility does not change in the next round. Failure to maintain the requisite activity level would result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. Commenters that oppose a 100% activity requirement are encouraged to explain their reasons with specificity.

15. *Activity Rule Waivers and Reducing Eligibility.* When a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

16. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity is below the minimum required unless: (1) The bidder has no activity rule waiver remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waiver remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

17. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the specified activity requirement. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

18. Under the proposed simultaneous stopping rule, a bidder would be permitted to apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bid is placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), and no proactive waiver will not keep the auction open. Comment is requested on the proposal that each bidder in Auction 106 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction.

19. *Reserve Price or Minimum Opening Bids.* Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. See 47 CFR 1.2104(c). OEA and MB propose to establish no separate reserve prices for the Auction 106 construction permits offered in Auction 106.

20. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. See 47 CFR 1.2104(d). Attachment A of the *Auction 106 Comment Public Notice* lists a proposed minimum opening bid amount for each construction permit offered in Auction 106. These minimum opening bid amounts for Auction 106 were determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available. Consistent with 47 U.S.C. 309(j)(4)(f), OEA and MB seek comment on the minimum opening bid amounts specified in Attachment A of the *Auction 106 Comment Public Notice.*

21. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts at which to start bidding, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. This public notice particularly seeks comment on factors that could reasonably have an impact on bidders' valuation of this broadcast spectrum, including the type of service offered, market size, population covered by the proposed broadcast facility, and any other relevant factors. Commenters also may wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—*e.g.,* by setting higher minimum opening bids to reduce the number of rounds it takes for construction permits to reach final prices—to other means of controlling auction pace, such as changes to bidding schedules, percentage increments, or activity requirements.

22. *Bid Amounts.* If the bidder has sufficient eligibility to place a bid on a particular construction permit in a round, a qualified bidder will be able to place a bid on that construction permit in any of up to nine different amounts. Under this proposal, the FCC auction bidding system interface will list the acceptable bid amounts for each construction permit.

23. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be equal to the amount of the provisionally winning bid plus a specified percentage of that bid amount. The percentage used for this calculation, the minimum acceptable bid increment percentage, is multiplied by the provisionally winning

bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions, as described in this public notice. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

24. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result, rounded, is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount would be (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2 *(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3 *(additional increment amount)); etc. The results then will be rounded using the Commission's standard rounding procedures for auctions.

25. For Auction 106, the proposal is to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, an additional bid increment percentage of 5% is proposed. OEA and MB seek comment on these proposals.

26. OEA and MB propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate. Further, OEA and MB propose to retain the discretion to do so on a construction-permit-by-construction-permit basis. OEA and MB also propose to retain the discretion to limit: (a) The amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, a $1,000 limit could be set on increases in minimum acceptable bid amounts over provisionally winning bids. In this example, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is $1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $1,000 above the provisionally winning bid. OEA and MB seek comment on the circumstances under which such a limit should be employed, factors to be considered when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If OEA and MB exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction.

27. If commenters disagree with the proposal to begin the auction with nine acceptable bid amounts per construction permit, they should suggest an alternative number of acceptable bid amounts to use. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirement, bid amounts, or by using other means.

28. *Provisionally Winning Bids.* At the end of each bidding round, the bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. The FCC auction bidding system will advise bidders of the status of their bids when round results are released. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Provisionally winning bids at the end of the auction become the winning bids.

29. The FCC auction bidding system assigns a pseudo-random number generated by an algorithm to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (*i.e.,* tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

30. *Bid Removal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

31. *Bid Withdrawal.* When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing a bid placed in a prior round that has become a provisionally winning bid. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

32. The Commission has recognized that bid withdrawals may be a helpful tool for bidders seeking to efficiently aggregate licenses or implement backup strategies in certain auctions. The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increased opportunities for anti-competitive bidding in certain circumstances. The Commission encouraged assertive exercise of

discretion, including limiting the number of rounds in which bidders may withdraw bids, and preventing bidders from bidding on a particular market if a bidder is found to be abusing the Commission's bid withdrawal procedures. In managing the auction, therefore, OEA and MB may limit the number of withdrawals to prevent bidding abuses.

33. Based on this guidance and on experiences with past auctions of FM broadcast construction permits, the public notice proposes to prohibit bidders from withdrawing any bid after the close of the round in which that bid was placed. This proposal is made in light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). Thus, it is unlikely that bidders will have a need to withdraw bids in this auction. Also, bid withdrawals, particularly if they were made late in this auction, could result in delays in licensing new FM stations and attendant delays in the offering of new broadcast service to the public. OEA and MB seek comment on this proposal to prohibit bid withdrawals in Auction 106. Commenters advocating alternative approaches should support their arguments by taking into account the construction permits offered, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

34. *Interim Withdrawal Payment Percentage.* If bid withdrawals are permitted in Auction 106, OEA and MB propose the interim bid withdrawal payment be 20% of the withdrawn bid. In accordance with 47 CFR 1.2104(g)(1), a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. When that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

35. The amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount. The Commission has determined that the level of interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses. In light of these considerations with respect to the construction permits being offered in this auction, this public notice proposes to use the maximum interim bid withdrawal payment percentage permitted by section 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. OEA and MB request comment on using 20% of the withdrawn bid for calculating an interim bid withdrawal payment amount in Auction 106. Commenters advocating the use of bid withdrawals should also address the interim bid withdrawal payment percentage.

36. *Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, whose long-form application is not granted for any reason or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment equal to the difference between the amount of the Auction 106 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

37. Based on the nature of the FM service and the construction permits being offered, an additional default payment of 20% of the relevant bid is proposed for Auction 106, which is consistent with the percentage in recent auctions of FM construction permits. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional 20% default payment will be more effective in deterring defaults than the 3% used in some earlier auctions. In light of these considerations, OEA and MB seek comment on the proposal to use for Auction 106 an additional default payment of 20% of the relevant bid.

III. Procedural Matters

38. *Paperwork Reduction Act.* The Office of Management and Budget (OMB) has approved the information collections in the application to participate in an FCC auction, FCC Form 175. OMB Control No. 3060–0600. This public notice proposes no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it also does not contain any new or modified 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).

39. *Ex Parte Rules.* This proceeding has been designated as a permit but disclose proceeding in accordance with the Commission's ex parte rules. Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, especially 47 CFR 1.1200(a) and 1.1206.

IV. Supplemental Initial Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM), and other Commission NPRMs (collectively, Competitive Bidding NPRMs) pursuant to which Auction 106 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order* and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 106 will be conducted. The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this public notice, to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Broadcast Competitive Bidding Order* and other Commission orders pursuant to which Auction 106 will be conducted. Written public comments are requested on this

Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadlines for comments specified on the first page of the *Auction 106 Comment Public Notice.* The Commission will send a copy of the public notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

41. *Need for, and Objectives of, the Public Notice.* The proposed procedures for the conduct of Auction 106 as described in the *Auction 106 Comment Public Notice* would constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR parts 1 and 73, adopted by the Commission in multiple notice-and-comment rulemaking proceedings, including the Commission's establishing in the underlying rulemaking orders additional procedures to be used on delegated authority. More specifically, the *Auction 106 Comment Public Notice* seeks comment on proposed procedures, terms and conditions governing Auction 106 and the post-auction application and payment processes, as well as seeking comment on the minimum opening bid amounts for 130 specified construction permits, and is fully consistent with the underlying rulemaking orders, including the *Broadcast Competitive Bidding Order* and other relevant competitive bidding orders.

42. Consistent with 47 U.S.C. 309(j)(3)(E)(i), the *Auction 106 Comment Public Notice* is intended to provide notice of proposed auction procedures and adequate time for Auction 106 applicants to comment on those proposed procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 106 participants, including small businesses, this public notice seeks comment on the following proposed procedures: (1) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); (2) a specific minimum opening bid amount for each construction permit offered in Auction 106; (3) a specific number of bidding units for each construction permit; (4) a specific upfront payment amount for each construction permit; (5) establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) use of a single-stage auction in which a qualified bidder is required to be active on 100% of its bidding eligibility in each bidding round as an activity requirement; (7) provision of three activity rule waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction; (8) use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change the methodology if circumstances dictate; (9) a procedure for breaking ties if identical high bid amounts are submitted on a construction permit in a given round; (10) whether to permit use of bid withdrawals; (11) establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event bid withdrawals are permitted in Auction 106; and (12) establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

43. *Legal Basis.* The Commission's statutory obligations to small businesses participating in a spectrum auction are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in 47 U.S.C. 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 106. The Commission has directed that OEA, in conjunction with MB, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.

44. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

45. The specific procedures and minimum opening bid amounts on which comment is sought in the *Auction 106 Comment Public Notice* will affect directly all applicants participating in Auction 106. The number of entities that may apply to participate in Auction 106 is unknown. Based on the number of applicants in prior FM auctions, we estimate that the number of applicants for Auction 106 may range from approximately 175 to 260. This estimate is based on the number of applicants who filed short-form applications to participate in previous open auctions of FM construction permits held to date, an average of 1.98 short-form applications were filed per construction permit offered, with a median of 1.365 applications per permit. The actual number of applicants for Auction 106 could vary significantly as any individual's or entity's decision to participate may be affected by a number of factors beyond the Commission's control.

46. *Radio Stations.* This U.S. Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in its own studio, from an affiliated network, or from external sources. According to the rulemaking order to assess 2019 annual regulatory fees, Commission staff identified from MB's Consolidated Database System (CDBS) 10,011 licensed radio facilities subject to annual regulatory fees as of October 1, 2018, excluding from this count radio stations exempt from required annual regulatory fees.

47. The SBA has established a small business size standard for this category as firms having $41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 51512. Economic Census data from 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard, the majority of such entities are small entities.

48. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of September 17, 2019, about 11,033 (or about 99.95%) of 11,039 commercial radio stations had revenues of $41.5 million or less and thus qualify as small entities under the SBA definition. The SBA size standard data, however, does

not enable a meaningful estimate of the number of small entities who may participate in Auction 106.

49. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The estimate of the number of small entities that might be affected by Auction 106 likely overstates the estimate because the revenue figure on which small business concerns are based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 106 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Further, it is not possible at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

50. It also is not possible to accurately develop an estimate of how many of the entities in this auction would be small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

51. In 2013, the Commission estimated that 97% of radio broadcasters met the SBA's prior definition of small business concern based on annual revenues of $7 million. The SBA has since increased that revenue threshold to $41.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. Based on Commission staff review of BIA/Kelsey, LLC's Media Access Pro Radio Database, 6,739 (99.91%) of 6,745 FM radio stations have revenue of $41.5 million or less. Accordingly, based on this data, it is estimated that the majority of Auction 106 applicants would likely meet the SBA's definition of a small business concern.

52. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The *Auction 106 Comment Public Notice* proposes no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. To participate in this auction, parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

53. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)–(4).

54. The proposals of the *Auction 106 Comment Public Notice* to facilitate participation in Auction 106 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures proposed for Auction 106 in this public notice should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 106. During the auction, participants will be able to access and participate in bidding via the internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a telephone technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation in Auction 106 by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 106, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

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

Federal Communications Commission.

William Huber,

Associate Chief, Auctions Division, Office of Economics and Analytics.

[FR Doc. 2019–24227 Filed 11–4–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 84, No. 214
Tuesday, November 5, 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

Forest Service

Newspapers for Publication of Legal Notices in the Eastern Region

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Forest Service administrative review procedures require agency officials to publish legal notices in newspapers of record for certain opportunities to comment and opportunities to file pre-decisional objections. Forest Service officials in the Eastern Region will publish those legal notices in the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. The Eastern Region consists of Illinois, Indiana, Ohio, Michigan, Minnesota, Missouri, New Hampshire, Maine, Pennsylvania, Vermont, New York, West Virginia, and Wisconsin. The public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of comment and objection opportunities required by those Parts and their associated procedures. This notice fulfills that requirement for the Eastern Region.

DATES: Use of these newspapers for purposes of publishing legal notice of opportunities to comment on proposals subject under 36 CFR part 218 and 36 CFR part 219, and notices of the opportunity to object under 36 CFR part 218 and 36 CFR part 219 shall begin the first day after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Michelle Ramos, Litigation Coordinator, 626 E Wisconsin Avenue, Milwaukee, Wisconsin 53202, Phone: (414) 297–1908.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Eastern Region will publish legal notice regarding proposed land management plans as required under 36 CFR 219.16 and legal notice regarding an opportunity to comment on proposed projects as required under 36 CFR 218.24 in the newspapers that are listed in this section by Forest Service administrative unit. Additionally, Responsible Officials in the Eastern Region will publish legal notice of the opportunity to object to a proposed project under 36 CFR part 218 or to object to a land management plan developed, amended, or revised under 36 CFR part 219 in the legal notice section of the following newspapers. Additional notice regarding an opportunity to comment or object under the above mentioned regulations may be provided in other newspapers not listed below at the sole discretion of the Responsible Official. Legal notice published in a newspaper of record of an opportunity to object is in addition to direct notice to those who have requested it and to those who have participated in planning for the project or land management plan proposal.

The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspaper of record. The timeframe for objection shall be based on the date of publication of the legal notice of the opportunity to object in the newspaper of record.

The following newspapers will be used to provide legal notice.

Eastern Region

Regional Forester Decisions

Affecting National Forest System lands in the Eastern Region, in the states of Illinois, Indiana, Ohio, Michigan, Minnesota, Missouri, New Hampshire, Maine, Pennsylvania, Vermont, New York, West Virginia, and Wisconsin, *The Milwaukee Journal/Sentinel,* published daily in Milwaukee, Milwaukee County, Wisconsin.

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions

Warren Times Observer, published Monday through Saturday in Warren, Warren County, Pennsylvania

District Ranger Decisions

Bradford District: *Bradford Era,* published Monday through Saturday in Bradford, McKean County, Pennsylvania

Marienville District: *The Kane Republican,* published Monday through Saturday in Kane, McKean County, Pennsylvania

Chequamegon/Nicolet National Forest, Wisconsin

Forest Supervisor Decisions

The Northwoods River News, published weekly Tuesdays, Thursdays, and Saturdays, Rhinelander, Oneida County, Wisconsin

District Ranger Decisions

Eagle River/Florence District: *The Northwoods River News,* published weekly Tuesdays, Thursdays, and Saturdays, Rhinelander, Oneida County, Wisconsin

Great Divide District: *The Ashland Daily Press,* published daily in Ashland, Ashland County, Wisconsin

Medford/Park Falls District: *The Star News,* published weekly in Medford, Taylor County, Wisconsin

Washburn District: *The Ashland Daily Press,* published daily in Ashland, Ashland County, Wisconsin

Lakewood/Laona District: *The Northwoods River News,* published weekly Tuesdays, Thursdays, and Saturdays in Rhinelander, Oneida County, Wisconsin

Chippewa National Forest, Minnesota

Forest Supervisor Decisions

Bemidji Pioneer, published weekly Wednesdays through Sundays in Bemidji, Beltrami County, Minnesota

District Ranger Decisions

Blackduck District: *The American,* published weekly in Blackduck, Beltrami County, Minnesota

Deer River District: *Grand Rapids Herald-Review,* published weekly Sundays and Wednesdays in Grand Rapids, Itasca County, Minnesota

Walker District: *The Pilot/Independent,* published weekly in Walker, Cass County, Minnesota

Green Mountain National Forest, Vermont

Forest Supervisor Decisions

The Rutland Herald, published weekly Tuesdays through Saturdays in Rutland, Rutland County, Vermont

District Ranger Decisions

Manchester, Middlebury and Rochester Districts: *The Rutland Herald,*

published weekly Tuesdays through Saturdays in Rutland, Rutland County, Vermont

Finger Lakes National Forest, New York

Forest Supervisor Decisions

The Ithaca Journal, published daily in Ithaca, Tompkins County, New York

District Ranger Decisions

Hector District: *The Ithaca Journal,* published daily in Ithaca, Tompkins County, New York

Hiawatha National Forest, Michigan

Forest Supervisor Decisions

The Daily Press, published daily in Escanaba, Delta County, Michigan

District Ranger Decisions

Rapid River District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan
Manistique District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan
Munising District: *The Mining Journal,* published daily in Marquette, Marquette County, Michigan
St. Ignace District: *The Sault News,* published daily in Sault Ste. Marie, Chippewa County, Michigan
Sault Ste. Marie District: *The Sault News,* published daily in Sault Ste. Marie, Chippewa County, Michigan

Hoosier National Forest, Indiana

Forest Supervisor Decisions

The Hoosier Times, published daily in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana

District Ranger Decisions

Brownstown District: *The Hoosier Times,* published Monday through Saturday in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana
Tell City District: *The Perry County News,* published weekly Mondays and Thursdays in Tell City, Perry County, Indiana

Huron-Manistee National Forest, Michigan

Forest Supervisor Decisions

Cadillac News, published daily in Cadillac, Wexford County, Michigan

District Ranger Decisions

Baldwin-White Cloud Districts: *Lake County Star,* published weekly in Baldwin, Lake County, Michigan
Cadillac-Manistee Districts: *Manistee News Advocate,* published daily in Manistee, Manistee County, Michigan
Mio District: *Oscoda County Herald,* published weekly in Mio, Oscoda County, Michigan
Huron Shores District: *Oscoda Press,* published weekly in Oscoda, Iosco County, Michigan

Mark Twain National Forest, Missouri

Forest Supervisor Decisions

The Rolla Daily News, published daily Mondays through Saturdays in Rolla, Phelps County, Missouri

District Ranger Decisions

Ava/Cassville/Willow Springs District: *Springfield News-Leader,* published daily in Springfield, Greene County, Missouri
Cedar Creek District: *Fulton Sun,* published daily in Fulton, Callaway County, Missouri
Eleven Point District: *Prospect News,* published weekly Wednesdays in Doniphan, Ripley County, Missouri
Rolla District: *Houston Herald,* published weekly Thursdays in Houston, Texas County, Missouri
Houston District: *Houston Herald,* published weekly Thursdays in Houston, Texas County, Missouri
Poplar Bluff District: *Daily American Republic,* published daily in Poplar Bluff, Butler County, Missouri
Potosi District: *The Independent-Journal,* published weekly Thursdays in Potosi, Washington County, Missouri
Fredericktown District: *The Democrat-News,* published weekly Wednesdays in Fredericktown, Madison County, Missouri
Salem District: *The Salem News,* published weekly Tuesdays in Salem, Dent County, Missouri

Midewin Tallgrass Prairie, Illinois

Prairie Supervisor Decisions

The Herald News, published daily in Joliet, Will County, Illinois

Monongahela National Forest, West Virginia

Forest Supervisor Decisions

The Inter-Mountain, published daily in Elkins, Randolph County, West Virginia

District Ranger Decisions

Cheat-Potomac District: *The Grant County Press,* published weekly in Petersburg, Grant County, West Virginia
Gauley District: *The Nicholas Chronicle,* published weekly in Summersville, Nicholas County, West Virginia
Greenbrier District: *The Pocahontas Times,* published weekly in Marlinton, Pocahontas County, West Virginia
Marlinton-White Sulphur District: *The Pocahontas Times,* published weekly in Marlinton, Pocahontas County, West Virginia

Ottawa National Forest, Michigan

Forest Supervisor Decisions

The Ironwood Daily Globe, published in Ironwood, Monday through Saturday, Gogebic County, Michigan; except, for those projects located solely within the Iron River District; *The Reporter,* published in Iron River, Iron County, Michigan

District Ranger Decisions

Bergland, Bessemer, Kenton, Ontonagon and Watersmeet Districts: *The Ironwood Daily Globe,* published in Ironwood, Monday through Saturday. Gogebic County, Michigan
Iron River District: *The Reporter,* published weekly Tuesdays in Iron River, Iron County, Michigan

Shawnee National Forest, Illinois

Forest Supervisor Decisions

Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois

District Ranger Decisions

Hidden Springs and Mississippi Bluffs Districts: *Southern Illinoisan,* published daily in Carbondale, Jackson County, Illinois

Superior National Forest, Minnesota

Forest Supervisor Decisions

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota

District Ranger Decisions

Gunflint District: *Cook County News-Herald,* published weekly in Grand Marais, Cook County, Minnesota
Kawishiwi District: *Ely Echo,* published weekly in Ely, St. Louis County, Minnesota
LaCroix District: *Mesabi Daily News,* published daily in Virginia, St. Louis County, Minnesota
Laurentian District: *Mesabi Daily News,* published daily in Virginia, St. Louis County, Minnesota
Tofte District: *Duluth News-Tribune,* published daily in Duluth, St. Louis County, Minnesota

Wayne National Forest, Ohio

Forest Supervisor Decisions

Athens Messenger, published Tuesday through Saturday in Athens, Athens County, Ohio

District Ranger Decisions

Athens District: *Athens Messenger,* published Tuesday through Saturday in Athens, Athens County, Ohio
Ironton District: *The Ironton Tribune,* published daily in Ironton, Lawrence County, Ohio

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions

The New Hampshire Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

District Ranger Decisions

Androscoggin District: *The New Hampshire Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire; except, for those projects located solely within the State of Maine; the *Lewiston Sun-Journal,* published daily in Lewiston, County of Androscoggin, Maine
Pemigewasset District: *The New Hampshire Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire
Saco District: *The New Hampshire Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire; except, for those projects located solely within the State of Maine; the *Lewiston Sun-Journal,* published daily in Lewiston, County of Androscoggin, Maine

Dated: October 16, 2019.

Tina Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2019–24072 Filed 11–4–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Fee Sites: Coconino National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Coconino National Forest proposes to charge new fees at two campsites. Fees are based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. New camping fees of $10 per night are proposed for Clint's Well and Kehl Springs. Fees will be determined upon further analysis and public comment. An analysis of nearby campsites with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area. Funds from fees would be used for the continued operation and maintenance and improvements of these sites.

DATES: Send any comments on the proposed new fees by December 5, 2019. The comments will be compiled, analyzed, and shared with the Recreation Resource Advisory Committee. New fees would begin six months after the date of this publication, if approved.

ADDRESSES: Written comments concerning this notice should be addressed to the Supervisor's Office: Laura Jo West, Forest Supervisor, Coconino National Forest, 1824 S Thompson Street, Flagstaff, AZ 86001.

FOR FURTHER INFORMATION CONTACT: Brady VanDragt, Recreation Program Manager, 928–477–5052. Information about proposed fee changes can also be found on the Coconino National Forests' website: *https://www.fs.usda.gov/main/coconino/home.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these proposed fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: October 23, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–24069 Filed 11–4–19; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Friday November 22, 2019 at 2:00 p.m. Central time. The Committee will discuss next steps in their study of prosecutorial discretion in the state.

DATES: The meeting will take place on Friday November 22, 2019 at 2:00 p.m. Central Time.

Public Call Information: Dial: 800–367–2403, Conference ID: 6653988.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Discussion: Prosecutorial Discretion in Mississippi

III. Public Comment
IV. Next Steps
V. Adjournment

Dated: October 31, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–24149 Filed 11–4–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Tuesday November 19, 2019, from 12:00–1:00 p.m. Eastern Time for the purpose of reviewing received testimony and discussing next steps in the Committee's final report and recommendations to the Commission on education funding in the state.

DATES: The meeting will be held on Tuesday November 19, 2019, at 12:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: *Public Call Information:* Dial: 800–367–2403, Conference ID: 5687909.

Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Education Funding in Ohio
Public Comment
Adjournment

Dated: October 31, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–24139 Filed 11–4–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–223–2019]

Foreign-Trade Zone 38—Spartanburg County, South Carolina; Application for Subzone, Commerce Warehouse Group, LLC, Rock Hill, South Carolina

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the South Carolina State Ports Authority, grantee of FTZ 38, requesting subzone status for the facilities of Commerce Warehouse Group, LLC, located in Rock Hill, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 30, 2019.

The proposed subzone would consist of the following sites: *Site 1* (9.22 acres) 2601 Commerce Drive, Rock Hill; *Site 2* (7.04 acres) 2651 Commerce Drive, Rock Hill; and, *Site 3* (7.58 acres) 2724 Commerce Drive, Rock Hill. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 38.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 16, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 30, 2019.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: October 30, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–24123 Filed 11–4–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

DATES: Applicable November 5, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: On July 26, 2019, the Department of Commerce (Commerce), pursuant to section 702(h) of the Trade Agreements Act of 1979 (as amended) (the Act), published the quarterly update to the annual listing of

foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period January 1, 2019 through March 31, 2019.[1] In the *First Quarter 2019 Update,* we requested that any party that has information on foreign government subsidy programs that benefit articles of cheese subject to an in-quota rate of duty submit such information to Commerce.[2] We received no comments, information or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce's update of subsidies on articles of cheese that were imported during the period April 1, 2019 through June 30, 2019. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed. Commerce encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[3] subsidy ($/lb)	Net[4] subsidy ($/lb)
28 European Union Member States[5]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2019–24121 Filed 11–4–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX026]

Atlantic Coastal Fisheries Cooperative Management 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 renewal application from the Commercial Fisheries Research Foundation contains all of the required information and warrants further consideration. This permit would facilitate research on the abundance and distribution of juvenile American lobster and Jonah crab along the northwest Atlantic coast.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative 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 November 20, 2019.

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

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on CFRF Lobster Study Fleet 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 ''Comments on CFRF Lobster Study Fleet EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225, *Laura.Hansen@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Commercial Fisheries Research Foundation (CFRF) submitted a complete application to renew an existing Exempted Fishing Permit (EFP) on October 1, 2019, to conduct fishing activities that the regulations would otherwise restrict. The EFP would authorize 20 vessels to continue a study using ventless lobster traps to survey the abundance and distribution of juvenile American lobster and Jonah crab in regions and times of year not covered by traditional surveys. This EFP proposes to use 60 ventless lobster traps throughout Lobster Conservation Management Areas (LCMA) 1, 2, 3, 4, and 5. Maps of these areas are available at: *https://www.fisheries.noaa.gov/resource/map/lobster-management-areas.* The study would inform management by addressing questions of changing reproduction and recruitment dynamics of lobster, and developing a foundation of knowledge for the data poor Jonah crab fishery.

Funding for this study is through the Campbell Foundation and the Saltonstall-Kennedy Grant Program (Grant # NA17NMF4270208). For this project, CFRF is requesting exemptions from the following Federal lobster regulations:

1. Gear specification requirements in 50 CFR 697.21(c) to allow for closed

[1] *See Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty,* 84 FR 36053 (July 26, 2019) (*First Quarter 2019 Update*).

[2] *Id.*

[3] Defined in 19 U.S.C. 1677(5).

[4] Defined in 19 U.S.C. 1677(6).

[5] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

escape vents and smaller trap mesh and entrance heads;

2. Trap limit requirements, as listed in § 697.19, for LCMA 1, 2, 3, 4 and 5, to be exceeded by 3 additional traps per fishing vessel for a total of 60 additional traps;

3. Trap tag requirements, as specified in § 697.19(j), to allow for the use of untagged traps (though each experimental trap will have the participating fisherman's identification attached); and

4. Possession restrictions in §§ 697.20(a), 697.20(d), and 697.20(g) to allow for temporary possession of juvenile, v-notched, and egg-bearing lobsters for onboard biological sampling.

If the EFP is approved, this research would take place during the regular fishing activity of the participating vessels: 6 ''inshore'' vessels in LCMA 2 and 14 ''offshore'' vessels in LCMAs 1, 3, 4, and 5. Experimental traps will be attached to a standard, Atlantic Large Whale Take Reduction Plan-compliant trap trawl. Modifications to conventional lobster traps include closed escape vents, single parlors, and smaller mesh sizes and entrance heads, to allow for the capture of juvenile lobsters and Jonah crabs. Sampling would occur weekly in LCMA 2, and every 10 days in the other areas.

All lobster and Jonah crabs caught in the experimental traps would be counted, sexed, and measured. Biological information including shell hardness and presence of eggs would also be recorded. All species captured in study traps would be returned promptly to the sea after sampling. All data collected would be made available to state and Federal management agencies to improve and enhance the available data for these two crustacean species.

We anticipate that the final rulemaking to implement Jonah crab Federal regulations will occur during the proposed study period. To ensure that there is no disruption to research activities, we would modify exemptions granted to this study, should they be approved, to include exemption from the possession of undersized and egg-bearing Jonah crabs. We have solicited comment on this expansion in the Jonah Crab Fishery Management Plan rulemaking process.

If approved, the applicant 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 31, 2019.

Ngagne Jafnar Gueye,

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

[FR Doc. 2019–24120 Filed 11–4–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU004

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held on December 3, 2019 from 9 a.m. to 5 p.m. PT and December 4, 2019 from 9 a.m. to 4 p.m. PT.

ADDRESSES: The meeting will be held at the Davenport Grand Hotel, 333 W Spokane Falls Blvd., Spokane, WA 99201; 509–458–3330.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and meeting information are located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.* The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: *http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include investigating potential scenarios for conserving and recovering salmon and steelhead; updates related to the biological tool for assessing biological strategies; and exploring social, cultural, economic and ecological considerations.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney, 503–231–6730, by November 26, 2019.

Dated: October 31, 2019.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2019–24146 Filed 11–4–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Department of the Air Force

Performance Review Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of the 2019 Performance Review Board for the Department of the Air Force.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms. Stacia Thompson, Air Force Senior Executive Management Office, AF/A1LS, 1040 Air Force Pentagon, Washington, DC 20330–1040 (PH: 703–693–6447; or via email at *stacia.g.thompson.civ@mail.mil*).

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(1–5), the Department of the Air Force announces the appointment of members to the Air Force's Senior Executive Service Performance Review Board. Appointments are made by the authorizing official. Each board member shall review and evaluate performance scores provided by the Senior Executive's rater/immediate supervisor. Performance standards must be applied consistently across the Air Force. The

board will make final recommendations to the authorizing official relative to the performance of the executive.

The members of the 2019 Performance Review Board for the Air Force are:

1. The Honorable Mr. Matthew P. Donovan, Under Secretary of the Air Force
2. General Stephen W. Wilson, Vice Chief of Staff of the Air Force
3. Gen Arnold Bunch, Commander, Air Force Materiel Command
4. The Honorable Mr. Shon J. Manasco, Assistant Secretary of the Air Force for Manpower and Reserve Affairs
5. Lt Gen Richard Clark, Deputy Chief of Staff for Strategic Deterrence and Nuclear Integration
6. Lt Gen David Thompson, Vice Commander, Air Force Space Command
7. Lt Gen (Sel) Mary O'Brien, Deputy Chief of Staff, Intelligence, Surveillance, Reconnaissance, and Cyber Effects Operations
8. Ms. Darlene Costello, Principal Deputy Assistant Secretary of the Air Force Acquisition, Technology & Logistics
9. Mr. John Fedrigo, Principal Deputy Assistant Secretary of Manpower and Reserve Affairs
10. Ms. Gwendolyn R. DeFilippi, Assistant Deputy Chief of Staff for Manpower, Personnel and Services
11. Mr. Richard Hartley, Principal Deputy Assistant Secretary for Financial Management and Comptroller
12. Mr. Anthony Reardon, Administrative Assistant to the Secretary of the Air Force
13. Mr. John Salvatori, Director, Concepts, Development and Management Office
14. Mr. Craig Smith, Principal Deputy General Counsel of the Air Force
15. Mr. Kevin Williams, Director for Studies, Analyses and Assessments
16. Ms. Patricia M. Young, Air Force Materiel Command Executive Director

The following Tier 3 SES members will serve as alternates:

1. Mr. Doug Bennett, Auditor General of the Air Force
2. Mr. James Brooks, Assistant Deputy Chief of Staff for Strategic Deterrence and Nuclear Integration
3. Mr. William Marion III, Deputy Chief Information Officer
4. Mr. Joseph McDade, Assistant Deputy Chief of Staff for Plans and Programs
5. Mr. Richard Lombardi, Deputy Under Secretary of the Air Force, Management and Deputy Chief Management Officer
6. Ms. Kelli Seybolt, Deputy Under Secretary of the Air Force, International Affairs
7. Mr. Randall Walden, Director and Program Executive Officer for the Air Force Rapid Capabilities Office, Office of the Administrative Assistant to the Secretary of the Air Force

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–24099 Filed 11–4–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC–IPAD) will take place.

DATES: Open to the public Friday, November 15, 2019, from 9:00 a.m. to 3:30 p.m.

ADDRESSES: Doubletree by Hilton Crystal City, 300 Army Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on November 15, 2019 of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the fifteenth public meeting held by the DAC–IPAD. The meeting will begin with Mr. Don Christensen, President of Protect Our Defenders, who will provide the advocacy organization's perspective on military sexual assault prosecutions, discovery, and sentencing. The Committee will conduct final deliberations and vote whether to approve the DAC–IPAD's *Sexual Assault Case Adjudication Report for Fiscal Years 2015 through 2018.* The Committee will receive a presentation by its Case Review Working Group on the working group's observations, findings, and assessments after having reviewed over 2,000 sexual assault investigative case files closed in fiscal year 2017 followed by Committee deliberations on the topics discussed. The DAC–IPAD's Referral Working Group will provide a status update and the Committee will conduct final deliberations on the Military Services' written responses to questions and testimony received at its August 23, 2019 public meeting related to sexual assault conviction and acquittal rates, victim participation in the military justice process and the referral process for sexual assault cases. The DAC–IPAD Director and staff will provide updates to the Committee on the Department of Defense's recent sexual assault-related collateral misconduct report and the input provided by the Committee; the military installation site visit plan for DAC–IPAD members in 2020; and sexual assault court-martial observations and attendance by members of the Committee.

Agenda: 9:00 a.m.–9:05 a.m. Public Meeting Begins—Welcome and Introduction; 9:05 a.m.–9:35 a.m.

Protect Our Defenders' Perspective on Military Sexual Assault Prosecutions and Sentencing; 9:35 a.m.–9:45 a.m. Committee Final Deliberations and Vote on the DAC–IPAD's *Sexual Assault Case Adjudication Report for Fiscal Years 2015–2018;* 9:45 a.m.–11:45 a.m. Case Review Working Group Presentation and Deliberations; 11:45 a.m.–12:45 p.m. Lunch; 12:45 p.m.–1:00 p.m. Referral Working Group Update; 1:00 p.m.–2:45 p.m. Committee Deliberations Regarding the Services' Responses to DAC–IPAD Request for Information (RFI) Set 11 and Testimony from the August 23, 2019, DAC–IPAD Public Meeting; 2:45 p.m.–2:55 p.m. Break; 2:55 p.m.–3:00 p.m. Collateral Misconduct Report Status Update; 3:00 p.m.–3:10 p.m. 2020 Military Installation Site Visit Update; 3:10 p.m.–3:20 p.m. Court-Martial Observations Update; 3:20 p.m.–3:30 p.m. Public Comment and Meeting Wrap-Up; 3:30 p.m. Public Meeting Adjourned.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Individuals requiring special accommodations to access the public meeting should contact the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the website for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 3:20 p.m. to 3:30 p.m. on November 15, 2019, in front of the Committee members.

Dated: October 30, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–24074 Filed 11–4–19; 8:45 am]

BILLING CODE 5001–06–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Public Hearing

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of public hearing on proposed EEO–1 Report amendments.

SUMMARY: Notice is hereby given that the Equal Employment Opportunity Commission (EEOC or Commission) has scheduled a public hearing to gather information and hear public comment on the proposed revision of the Employer Information Report (EEO–1).

DATES: November 20, 2019; 9:30 a.m.

ADDRESSES: EEOC Headquarters, 131 M Street NE, Washington, DC, Jacqueline A. Berrien Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Rashida Dorsey, Ph.D., MPH, Director, Data Development and Information Products Division and Senior Advisor on Data Strategy, Office of Enterprise Data and Analytics, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, (202) 663–4355 (voice) or (202) 663–7063 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to section 709(c) of the Civil Rights Act of 1964, the Commission is holding a public hearing to discuss the proposed changes to the EEO–1 Report. The proposed changes are described in the Commission's September 12, 2019, Paperwork Reduction Act Notice, 84 FR 48138. In the Notice, the EEOC stated that it was planning to seek approval under the Paperwork Reduction Act to continue administering Component 1 of the EEO–1 survey, which the EEOC had sponsored for many years. The EEOC also said that it is not planning to continue using the EEO–1 Report to collect Component 2 pay data information, which the Commission originally added to the EEO–1 in 2016.

The public is invited to attend, but space is limited and will be given on a first come, first serve basis.

The Commission plans to hear from panels of experts, representing a diverse range of different views. Invited panelists will be given the opportunity to present their views at the hearing, and members of the public have the opportunity to submit comments until November 12, 2019, in response to the Commission's Paperwork Reduction Act Notice.

For the Commission.

Dated: October 30, 2019.

Janet Dhillon,

Chair.

[FR Doc. 2019–24118 Filed 11–4–19; 8:45 am]

BILLING CODE 6570–01–P

EXPORT–IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Friday, November 22, 2019 at 9:00 a.m. The meeting will be held at Ex-Im Bank in Room 1126, 811 Vermont Avenue NW, Washington, DC 20571.

OPEN AGENDA ITEM: Item No. 1 Small Business Update.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: Members of the public who wish to attend the meeting should call Joyce Stone, Office of the General Counsel, 811 Vermont Avenue NW, Washington, DC 20571 (202) 565–3336 by close of business Tuesday, November 19, 2019.

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2019–24247 Filed 11–1–19; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0214; OMB 3060–0844; OMB 3060–0980; OMB 3060–1065]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (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 collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 January 6, 2020. 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: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents and Responses: 23,984 respondents; 62,839 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,043,805 hours.

Total Annual Cost: None.

Privacy Impact Assessment: The Commission prepared a system of records notice (SORN), FCC/MB–2, ''Broadcast Station Public Inspection Files,'' that covers the PII contained in the broadcast station public inspection files located on the Commission's website. The Commission will revise appropriate privacy requirements as necessary to include any entities and information added to the online public file in this proceeding.

Nature and Extent of Confidentiality: Most of the documents comprising the public file consist of materials that are not of a confidential nature. Respondents complying with the information collection requirements may request that the information they submit be withheld from disclosure. If confidentiality is requested, such requests will be processed in accordance with the Commission's rules, 47 CFR 0.459.

In addition, the Commission has adopted provisions that permit respondents subject to the information collection requirement for Shared Service Agreements to redact confidential or proprietary information from their disclosures.

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the public file obligations of full power television broadcasters were slightly modified, although the resulting burdens will be unchanged. The modified information collection requirements are as follows:

47 CFR 73.3526(e)(15)—Must-carry or retransmission consent election. Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in §§ 76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three-year election period to which the statement applies. Commercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from MVPDs. Each commercial television station is responsible for the continuing accuracy and completeness of the information furnished.

47 CFR 73.3527(e)(12)—Must-carry requests. States noncommercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from MVPDs. Each noncommercial television station is responsible for the continuing accuracy and completeness of the information furnished. Any such station requesting mandatory carriage pursuant to Part 76 of this chapter shall place a copy of such request in its public file and shall retain both the request and relevant correspondence for the duration of any period to which the request applies.

OMB Control Number: 3060–0844.

Title: Carriage of the Transmissions of Television Broadcast Stations: Section 76.56(a), Carriage of qualified noncommercial educational stations; Section 76.57, Channel positioning; Section 76.61(a)(1)–(2), Disputes concerning carriage; Section 76.64, Retransmission consent.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,872 respondents and 7,052 responses.

Estimated Time per Response: 0.5 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 325, 336, 614 and 615 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,471 hours.

Total Annual Cost: No cost.

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: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the obligations of broadcasters and cable operators were slightly modified (*see* 47 CFR 76.64(h) below for the modified rule which requires review and approval from the Office of Management and Budget (OMB)). Under 47 CFR 76.64 the information collection requirements are as follows:

○ *(h)(1):* On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place a copy of its election statement, and copies of any election change notices applying to the upcoming carriage cycle, in the station's public file

○ *(h)(2):* Each cable operator shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions with respect to its systems and an up-to-date phone number for carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

○ *(h)(3):* A station shall send a notice of its election to a cable operator only if changing its election with respect to one or more of that operator's systems. Such notice shall be sent to the email address provided by the cable system and carbon copied to *ElectionNotices@FCC.gov.* A notice must include, with respect to each station referenced in the notice, the:

- Call sign;
- community of license;
- DMA where the station is located;
- specific change being made in election status;
- email address for carriage-related questions;
- phone number for carriage-related questions;
- name of the appropriate station contact person; and,
- if the station changes its election for some systems of the cable operator but not all, the specific cable systems for which a carriage election applies.

○ *(h)(4):* Cable operators must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

OMB Control Number: 3060–0980.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, 47 CFR Section 76.66.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,410 respondents; 4,388 responses.

Estimated Time per Response: 0.5 hour to 5 hours.

Frequency of Response: Third party disclosure requirement; On occasion reporting requirement; Once every three years reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 325, 338, 339 and 340.

Total Annual Burden: 3,576 hours.

Total Annual Cost: $24,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the public file obligations of DBS providers, and the notice requirements of broadcasters, were slightly modified. The rule modifications were made to 47 CFR 76.66(d)(1)(ii)–(vi) and 76.66(d)(3)(ii) as indicated above. These modifications need OMB review and approval. They are as follows:

47 CFR 76.66(d)(1)(ii) requires DBS providers to place an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions in their public file, to keep that information updated, and to respond to questions from broadcasters expeditiously.

47 CFR 76.66(d)(1)(iii) states that stations only have to send notice when changing an election, and that notices must be sent to the email address provided by the satellite carrier and carbon copied to *ElectionNotices@FCC.gov.*

47 CFR 76.66(d)(1)(iv) states that a television station's written notification shall include, with respect to each station referenced in the notice, the:

(A) Call sign;

(B) community of license;

(C) DMA where the station is located;

(D) specific change being made in election status;

(E) email address for carriage-related questions;

(F) phone number for carriage-related questions; and

(G) name of the appropriate station contact person.

47 CFR 76.66(d)(1)(v) states that a satellite carrier must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

47 CFR 76.66(d)(1)(vi) states that, within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

(A) Those local television stations it will not carry, along with the reasons for such a decision; and

(B) those local television stations it intends to carry.

47 CFR 76.66(d)(3)(ii) states that a new television station shall make its election request, in writing, sent to the satellite carrier's email address provided by the satellite carrier and carbon copied to *ElectionNotices@FCC.gov,* between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iv) of this section.

OMB Control Number: 3060–1065.

Title: Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2 respondents; 2 responses.

Estimated Time per Response: 1–10 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; one time reporting requirement; annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in Section 335 of the Communications Act of 1934, as amended.

Total Annual Burden: 49 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR 0.459).

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the public file obligations of DBS providers were slightly modified.

Therefore, the following information collection requirement needs review and approval from the Office of Management and Budget (OMB):

47 CFR 25.701(f)(6)(i)(D) requires that each satellite carrier shall provide an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions. Each satellite carrier is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–24070 Filed 11–4–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0994]

Information Collection 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 collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 January 6, 2020. 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 No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L Band, and the 1.6/2.4 GHz Band.

Form No: Not Applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 126 respondents; 126 responses.

Estimated Time per Response: 0.50–50 hours per response.

Frequency of Response: On occasion, one time and annual reporting requirements, third-party disclosure and recordkeeping requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r).

Total Annual Burden: 520 hours.

Annual Cost Burden: $529,160.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as a revision following the 60-day comment period in order to obtain the full three-year clearance from OMB. This information collection is revised to reflect a decrease in annual costs from $530,340 to $529,160 due to the Commission's elimination of equipment certification fees. This results in a program change of −$1,180 in annual costs.

The purposes of this collection are to obtain information necessary for licensing operators of Mobile-Satellite Service (MSS) networks to provide ancillary services in the U.S. via terrestrial base stations (Ancillary Terrestrial Components, or ATCs); obtain the legal and technical information required to facilitate the integration of ATCs into MSS networks in the L-Band and the 1.6/2.4 GHz Bands; and to ensure that ATC licensees meet the Commission's legal and technical requirements to develop and maintain their MSS networks and operate their ATC systems without causing harmful interference to other radio systems.

This information collection is used by the Commission to license commercial ATC radio communication services in the United States, including low-power ATC. The revised collection is to be used by the Commission to regulate equipment manufacturers and licensees of low-power ATC networks. Without the collection of information that would result from these final rules, the Commission would not have the necessary information to grant entities the authority to operate commercial ATC stations and provide telecommunications services to consumers.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2019–24103 Filed 11–4–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–83]

Meeting of the Broadband Deployment Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC announces and provides an agenda for the next meeting of the Broadband Deployment Advisory Committee (BDAC).

DATES: December 3, 2019. The meeting will come to order at 9:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Justin L. Faulb, Designated Federal Authority (DFO) of the BDAC, at *justin.faulb@fcc.gov* or 202–418–1589; Zachary Ross, Deputy DFO of the BDAC, at *Zachary.ross@fcc.gov* or 202–418–1033; or Belinda Nixon, Deputy DFO of the BDAC, at 202–418–1382, or *Belinda.Nixon@fcc.gov*. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will accommodate as many participants as possible; however, admittance will be limited to seating availability. The FCC will also provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *www.fcc.gov/live*. Oral statements at the meeting by parties or entities not represented on the BDAC will be permitted to the extent time permits, at the discretion of the BDAC Chair and the DFO. Members of the public may submit comments to the BDAC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs*. Comments to the BDAC should be filed in Docket 17–83.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the BDAC will receive status reports and updates from its three working groups: Disaster Response and Recovery, Increasing Broadband Investment in Low-Income Communities, and Broadband Infrastructure Deployment Job Skills and Training Opportunities. This agenda may be modified at the discretion of the BDAC Chair and the Designated Federal Officer (DFO).

Federal Communications Commission.

Pamela Arluk,

Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2019–24110 Filed 11–4–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, November 21, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: The November 21, 2019 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–24181 Filed 11–1–19; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201103–014.

Agreement Name: Memorandum Agreement of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs.

Parties: International Longshoremen's and Warehousemen's Union and Pacific Maritime Association.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises the agreement to include a Passenger Sector Supplemental Assessment, effective January 1, 2020, to replace the lost assessment revenue resulting from the addition of labor to accommodate passenger cruise line operations, and also revises various figures set forth in Appendix 1.

Proposed Effective Date: 10/24/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10164.

Dated: October 31, 2019.

Rachel Dickon,

Secretary.

[FR Doc. 2019–24115 Filed 11–4–19; 8:45 am]

BILLING CODE 6731–AA–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 December 5, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Greene Investment Company, Jefferson, Iowa;* to merge with Perry Investment Company and thereby indirectly acquire Raccoon Valley Bank, both of Perry, Iowa.

Board of Governors of the Federal Reserve System, October 31, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–24130 Filed 11–4–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Board Member Meeting

77 K Street NE, 10th Floor, Washington, DC 20002
November 13, 2019, 8:30 a.m.

Open Session

1. Approval of the October 28, 2019 Board Meeting Minutes
2. Investment Manager Annual Service Review
3. Investment Benchmark Update
4. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance
   (c) Legislative Report
5. Quarterly Reports
   (d) Metrics
6. Office of Resource Management Annual Report and FEVS Update

Closed Session

Information covered under 5 U.S.C. 552b(c)(6).

Contact Person for More Information: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: October 30, 2019.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2019–24085 Filed 11–4–19; 8:45 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MA–2019–09; Docket No. 2019–0002; Sequence No. 26]

Federal Management Regulation (FMR); Sleeping in Federal Buildings

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: This bulletin reaffirms that sleeping in buildings under the jurisdiction, custody or control of GSA, including those buildings delegated to other Federal agencies by the Administrator of General Services, is prohibited, except when expressly authorized by an agency official. Sleeping may be authorized if the person is directed by a supervisor to remain in the building to conduct official government business and it is necessary for the person to sleep on the premises or, in the case of an emergency where there is imminent danger to human life or property, where persons are directed to shelter-in-place.

DATES: *Applicable:* November 5, 2019.

FOR FURTHER INFORMATION CONTACT: Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, GSA at 202–501–2956, or email *realpropertypolicy@gsa.gov*. Please cite FMR Bulletin B–49.

SUPPLEMENTARY INFORMATION: The Federal Management Regulation (FMR) does not specifically identify unauthorized sleeping as a type of prohibited conduct in subpart C of 41 CFR part 102–74. Instead, agency officials have relied on provisions in the FMR that address hazards, disturbances and failure to comply with the lawful direction of Federal police officers and other authorized individuals to prohibit the practice of unofficially sleeping in Federal buildings. Since GSA has received questions regarding the permissibility of sleeping in Federal buildings, and the FMR does not specifically address this conduct, GSA is issuing this bulletin to reaffirm the fact that all persons are prohibited from sleeping in Federal buildings, except when such activity is expressly authorized by an agency official. The Facility Manager will post this bulletin in a conspicuous place in the building so that all persons in the building have constructive or actual notice of the policy.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2019–24102 Filed 11–4–19; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for Symbria SAFE

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from Symbria SAFE, PSO number P0146, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on October 31, 2019.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed*.

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for

the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from Symbria SAFE, a component entity of Symbria Inc., to voluntarily relinquish its status as a PSO. Accordingly, Symbria SAFE, P0146, was delisted effective at 12:00 Midnight ET (2400) on October 31, 2019.

Symbria SAFE has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov*.

Virginia Mackay-Smith,

Associate Director.

[FR Doc. 2019–24152 Filed 11–4–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Thursday, November 21, 2019, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at AHRQ, 5600 Fishers Lane, Rockville, Maryland, 20857.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov*.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Thursday, November 7, 2019. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Phelps' phone number is (301) 427–1128.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Thursday, November 21, 2019, the Council meeting will convene at 8:30 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting is open to the public and will be available via webcast at *www.webconferences.com/ahrq*. The meeting will begin with an update on AHRQ's budget, programs and initiatives. The agenda will also include a discussion about the challenges and opportunities to leverage AHRQ's CDS Connect to improve care and a conversation about the gaps and opportunities for improving care, with a focus on social determinants of health. The meeting will adjourn at 12:00 p.m. The final agenda will be available on the AHRQ website at *www.AHRQ.gov* no later than Thursday, November 14, 2019.

Dated: October 30, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–24081 Filed 11–4–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reporting of Pregnancy Success Rates From Assisted Reproductive Technology (ART) Programs; Clarifications and Corrections

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces clarifications for and correction to certain data collection fields, terminology, and definitions used for reporting of pregnancy success rates from assisted reproductive technology (ART) programs. This reporting is required by the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA).

DATES: These clarifications and corrections will be implemented January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Jeani Chang, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–C107–2, Atlanta, Georgia 30341. Phone: (770) 488–6355. Email: *ARTinfo@cdc.gov.*

SUPPLEMENTARY INFORMATION: On August 26, 2015, HHS/CDC published a notice in the **Federal Register** (80 FR 51811) announcing the overall reporting requirements of the National ART Surveillance System (NASS). The notice described who shall report to HHS/CDC; the process for reporting by each ART program; the data to be reported; and the contents of the published reports. This current notice, published November 5, 2019, includes clarifications for some variables and definitions to improve quality of data. Corrections were made to align with current terminology. These clarifications and corrections will be helpful by clarifying reporting requirements in certain unique situations and updating terminology to align with current practice. This notice includes the current guidance and definitions that will be implemented starting January 1, 2020.

Clarifications and Corrections

Section II. When and How To Report

Section A. Reporting Activities

Current: All cycle data must be reported prospectively, *i.e.,* reporting of initial cycle intent and select patient details is required within four days of cycle initiation.

Clarification (to improve the quality of data by clarifying prospective reporting requirements for natural cycles and frozen cycles; effective January 1, 2020): All cycle data must be reported prospectively, *i.e.,* reporting of initial cycle intent and select patient details is required: (a) At least one day prior to oocyte retrieval for all natural cycles using fresh embryos created from fresh eggs; (b) at least one day prior to thaw for all frozen oocyte or frozen embryo cycles; and (c) within four days of cycle initiation for all other cycles.

Section B. Cycle Information

Current: Intended banking type (Embryo banking, autologous oocyte banking, donor oocyte banking).

Clarification (to differentiate oocyte source for banking cycles; effective January 1, 2020): Intended banking type (Embryo banking from autologous oocytes, embryo banking from donor oocytes, autologous oocyte, donor oocyte).

Section C. Patient History

Current: Number of Prior ART cycles (Fresh & Frozen).

Clarification (to clarify question applicability; effective January 1, 2020): Number of Prior ART cycles started with the intent to transfer oocytes or embryos.

Section F. Stimulation and Retrieval

Current: Date of retrieval.

Clarification (to clarify the definition for different treatment protocols; effective January 1, 2020): In general, each retrieval should be reported as its own cycle. This includes egg retrievals for fertility preservation cycles (*e.g.,* for cancer patients). In the case of continuous stimulation or dual stimulation to maximize the number of eggs retrieved in the shortest possible time, the cycle start date for the subsequent retrieval will be the day that stimulation medication was restarted after the trigger was administered for the previous egg retrieval; if the stimulation medication was never stopped, stimulation start will be the day after the previous egg retrieval.

If a patient is having a second egg retrieval due to a ''failed trigger'' (*i.e.,* patient medication administration error or poor response to the trigger that results in unexpectedly low number of eggs), the second trigger and retrieval date would be used for reporting as part of the first cycle. In this case, the interval between the first and second retrieval should not exceed 2 days. If the interval exceeds 2 days, each retrieval should be entered as its own cycle.

Section G. Laboratory Information

Current:

Indication for ICSI (Prior failed fertilization, Poor fertilization, PGD or PGS, Abnormal semen parameters, Low oocyte yield, Laboratory routine, Frozen cycle, Rescue ICSI, Other)
PGD (Pre-implantation genetic diagnosis) or screening (PGS)
Reasons for PGD or PGS
Technique used for PGD or PGS

Correction (to update the terminology for preimplantation genetic testing; effective January 1, 2020):

Indication for ICSI (Prior failed fertilization, Poor fertilization, PGT, Abnormal semen parameters, Low oocyte yield, Laboratory routine, Frozen cycle, Rescue ICSI, Other)
PGT (Pre-implantation genetic testing)
Reasons for PGT
Technique used for PGT

Section H. Transfer Information

Current: Endometrial Thickness Prior to Embryo Transfer.

Clarification (to clarify the timing of measurement; effective January 1, 2020): Most Recent Endometrial Thickness.

Section J. Definitions

Current: Cycle start date (cycle initiation date)—

(1) For fresh embryo (both donor and nondonor): The first day that medication to stimulate follicular development is given in a stimulated cycle or the first day of menses in an unstimulated cycle. For example:

a. The first day of gonadotropins in a gonadotropin only cycle or in a long suppression GnRH agonist-gonadotropin cycle;

b. The first day of GnRH agonist in a GnRH agonist flare-gonadotropin cycle;

c. The first day of clomiphene or letrozole in a clomiphene/gonadotropin cycle or a clomiphene only cycle;

d. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

(2) For fresh embryo donor cycles:

a. The first day exogenous sex steroids are given to patient to prepare the endometrium;

b. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

(3) For frozen embryo cycles (both donor and non-donor):

a. The first day exogenous sex steroids are given to prepare the endometrium;

b. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

(4) For oocyte/embryo banking cycles:

a. The first day of gonadotropins in a gonadotropin only cycle or in a long suppression GnRH agonist-gonadotropin cycle;

b. The first day of GnRH agonist in a GnRH agonist flare-gonadotropin cycle;

c. The first day of clomiphene or letrozole in a clomiphene/gonadotropin cycle or a clomiphene only cycle;

d. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

Clarification (to clarify the definition for different types of cycles; effective January 1, 2020): Cycle start date (cycle initiation date)—

(1) For cycles using fresh embryos created from fresh nondonor eggs: The first day that medication to stimulate follicular development is given in a stimulated cycle or the first day of menses in an unstimulated cycle. For example:

a. The first day of gonadotropins in a gonadotropin only cycle or in a long

suppression GnRH agonist-gonadotropin cycle;

b. The first day of GnRH agonist in a GnRH agonist flare-gonadotropin cycle;

c. The first day of clomiphene or letrozole in a clomiphene/gonadotropin cycle or a clomiphene only cycle;

d. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

(2) For cycles using fresh embryos created from fresh donor eggs:

a. The first day exogenous sex steroids are given to patient to prepare the endometrium;

b. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

(3) For cycles using frozen eggs or frozen embryos (both donor and non-donor):

a. The first day exogenous sex steroids are given to prepare the endometrium;

b. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

(4) For oocyte/embryo banking cycles:

a. The first day of gonadotropins in a gonadotropin only cycle or in a long suppression GnRH agonist-gonadotropin cycle;

b. The first day of GnRH agonist in a GnRH agonist flare-gonadotropin cycle;

c. The first day of clomiphene or letrozole in a clomiphene/gonadotropin cycle or a clomiphene only cycle;

d. The first day of natural menses or withdrawal bleeding in an unstimulated cycle.

Current: Preimplantation genetic diagnosis (PGD)—Characterization of a cell or cells from preimplanted embryos from IVF cycles to determine the presence or absence of a specific genetic defect.

Preimplantation genetic screening (PGS)—Characterization of a cell or cells from preimplanted embryos from IVF cycles to identify genetic abnormalities.

Correction (to update the terminology; effective January 1, 2020): Preimplantation genetic testing (PGT)—Testing performed to analyze DNA from oocytes or embryos for determining genetic abnormalities, including aneuploidies (PGT–A), monogenic/single gene defects (PGT–M), and chromosomal structural rearrangements (PGT–SR).

Dated: October 30, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–24043 Filed 11–4–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Scholarships for Disadvantaged Students, OMB No. 0915–0149—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR have been provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than December 5, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Scholarships for Disadvantaged Students Program OMB No. 0915–0149—Revision.

Abstract: HRSA seeks to update the Scholarships for Disadvantaged Students (SDS) program-specific form to collect 3 years of student data instead of 1 year of student data from SDS program applicants. This will assist the agency in making funding decisions for SDS program awards. The form will reflect programmatic changes to the SDS program, made after consideration of the comments received in response to the request for public comment, published at 84 FR 23571, which will be finalized in the forthcoming SDS Policy Change **Federal Register** Notice.

Need and Proposed Use of the Information: The purpose of the SDS Program is to make grant awards to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions programs. To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (section 737(d)(1)(B) of the Public Health Service (PHS) Act). To meet this requirement, a school must show that at least 20 percent of the school's full-time enrolled students and graduates are from a disadvantaged background. HRSA previously required schools to demonstrate this percentage by submitting 1 year of data; a school must now provide this data for the most recent 3 year period.[1] The proposed revisions to the SDS program-specific form will require applicants to provide the percentage of full-time enrolled students and graduates from a disadvantaged background over a 3-year period, consistent with this policy change.

An additional change to the SDS program is that a 3 year average, instead of a 1 year average, will be used to calculate priority points, which are provided to eligible schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (section 737(c) of the PHS Act). The proposed revisions to the SDS program-specific form will require applicants to provide a 3 year average for these percentages, consistent with this policy change, as opposed to the 1 year of data previously required.

Likely Respondents: Institutions that apply for SDS program awards.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train

[1] The SDS program will allow an exception for newly established schools; that is, schools that have not been in existence long enough to have three 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, with at least two years of student enrollment, and at least one year of graduation data.

personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
SDS Application Program Specific form	323	1	323	31	10,013
Total	323		323		10,013

From the last submission, the number of respondents has been updated with more recent application figures. There were 400 applications received for the 2012 application cycle and 323 applications from the 2016 cycle.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–24111 Filed 11–4–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0001]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 6, 2020.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0001–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Project Title: Application for waiver of the two-year foreign residence requirement of the Exchange Visitor Program.

OMB No.: 0990–0001.

Abstract: The Office of Global Affairs (OGA) is requesting an approval on an extension by OMB on a currently approved collection, OMB #0990–0001. The HHS program deals with both research and clinical care waivers. Applicant institutions apply to this Department to request a waiver on behalf of research scientists or foreign medical graduates to work as clinicians in HHS designated health shortage areas doing primary care in medical facilities. The instructions request a copy of Form G–28 from applicant institutions represented by legal counsel outside of the applying institution. United States Department of Justice Form G–28 ascertains that legal counsel represents both the applicant organization and the exchange visitor.

Need and Proposed Use of the Information: Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

Likely Respondents: Research scientists and research facilities.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Application Waiver/Supplemental A Research	HHS 426	45	1	10	450
Application Waiver/Supplemental B Clinical Care	HHS 426	35	1	10	350
Total					800

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–24157 Filed 11–4–19; 8:45 am]

BILLING CODE 4150–38–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; PAR Panel: Synthetic Psychoactive Drugs and Strategic Approaches to Counteract Their Deleterious Effects.

Date: November 12, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, (301) 435–1235, *geoffreys@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Technologies.

Date: November 22, 2019.

Time: 2:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, Md 20892, (301) 455–2364, *tatiana.cohen@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 30, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–24080 Filed 11–4–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; National Institute Dental and Craniofacial Research Mentoring Network to Support a Diverse Dental, Oral and Craniofacial Research Workforce (UE5).

Date: November 15, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute Dental and Craniofacial Research, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 30, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–24079 Filed 11–4–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of SGS North America, Inc. (Freeport, TX), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of SGS North America, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc. (Freeport, TX), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of April 3, 2019.

DATES: SGS North America, Inc., was approved as a commercial gauger as of April 3, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that SGS North America, Inc., 1740 West 4th St., Suite 108, Freeport, TX 77541, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2019–24127 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc. (Valdez, AK) as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc. (Valdez, AK), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Valdez, AK), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of May 17, 2018.

DATES: Intertek USA, Inc. (Valdez, AK) was approved as a commercial gauger as of May 17, 2018. The next triennial inspection date will be scheduled for May 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 354 Fairbanks St., Valdez, AK 99686, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc. (Valdez, AK) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24145 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation (Beaumont, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (Beaumont, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Beaumont, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 10, 2019.

DATES: Inspectorate America Corporation (Beaumont, TX) was approved and accredited as a commercial gauger and laboratory as of April 10, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 6175 Hwy. 347, Beaumont, TX 77705, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation (Beaumont, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Inspectorate America Corporation (Beaumont, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or

gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24136 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP (Houston, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP (Houston, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP (Houston, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of March 13, 2019.

DATES: Saybolt LP (Houston, TX) was approved and accredited as a commercial gauger and laboratory as of March 13, 2019. The next triennial inspection date will be scheduled for March 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 16025–A Jacintoport Blvd., Houston, TX 77015, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Saybolt LP (Houston, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Saybolt LP (Houston, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
N/A	D 97	Standard Test Method for Pour Point of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24125 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of SGS North America, Inc. (Sulphur, LA), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of SGS North America, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc. (Sulphur, LA), has been approved to gauge petroleum and petroleum products for customs purposes for the next three years as of July 25, 2018.

DATES: SGS North America, Inc., was approved as a commercial gauger as of July 25, 2018. The next triennial inspection date will be scheduled for July 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13,

that SGS North America, Inc., 2304 East Burton St., Sulphur, LA 70663, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2019–24126 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation (Peñuelas, PR) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (Peñuelas, PR), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Peñuelas, PR), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 26, 2018.

DATES: Inspectorate America Corporation (Peñuelas, PR) was approved and accredited as a commercial gauger and laboratory as of September 26, 2018. The next triennial inspection date will be scheduled for September 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, Road 127 Km. 19.1, Peñuelas, PR 00624, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation (Peñuelas, PR) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Inspectorate America Corporation (Peñuelas, PR) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24135 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation (St. Croix, USVI) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (St. Croix, USVI), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (St. Croix, USVI), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 6, 2019.

DATES: Inspectorate America Corporation (St. Croix, USVI) was approved and accredited as a commercial gauger and laboratory as of June 6, 2019. The next triennial inspection date will be scheduled for June 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 1 Estate Hope, St. Croix, USVI 00821, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation (St. Croix, USVI) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Inspectorate America Corporation (St. Croix, USVI) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
N/A	D 2163	Standard Test Method for Determination of Hydrocarbons in Liquefied Petroleum (LP) Gases and Propane/Propene Mixtures by Gas Chromatography.
N/A	D 2598	Standard Practice for Calculation of Certain Physical Properties of Liquefied Petroleum (LP) Gases from Compositional Analysis.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24137 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc (Freeport, TX) as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc (Freeport, TX) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc (Freeport, TX), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of May 22, 2019.

DATES: Intertek USA, Inc (Freeport, TX) was approved, as a commercial gauger as of May 22, 2019. The next triennial inspection date will be scheduled for May 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc, 214 N Gulf Blvd., Freeport, TX 77541 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc (Freeport, TX) is approved for the following gauging procedures for

petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24141 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc. (Tampa, FL) as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc. (Tampa, FL) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Tampa, FL), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 8, 2018.

DATES: Intertek USA, Inc. (Tampa, FL) was approved, as a commercial gauger as of August 8, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 4951A East Adamo Drive, Suite 130, Tampa, FL 33605 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc. (Tampa, FL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24134 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc. (Gonzales, LA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc. as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Gonzales, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 9, 2019.

DATES: Camin Cargo Control, Inc., was accredited and approved as a commercial gauger and laboratory as of April 9, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 2137 S. Phillipe Ave., Gonzales, LA 70737, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D5002	Density of Crude Oils by Digital Density Meter.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.
N/A	D 5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A	D 6377	Standard Test Method for Determination of Vapor Pressure of Crude Oil: VPCRx (Expansion Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the website listed below for the current CBP Approved Gaugers and Accredited Laboratories List. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24129 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Tampa, FL) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Tampa, FL), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Tampa, FL), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 18, 2019.

DATES: AmSpec LLC (Tampa, FL) was approved and accredited as a commercial gauger and laboratory as of June 18, 2019. The next triennial inspection date will be scheduled for June 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 4951 E Adamo Dr., Suite 208, Tampa, FL 33605, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Tampa, FL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

AmSpec LLC (Tampa, FL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24140 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc. (Seabrook, TX), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc. (Seabrook, TX), has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of October 24, 2018.

DATES: SGS North America, Inc., was accredited and approved as a commercial gauger and laboratory as of October 24, 2018. The next triennial inspection date will be scheduled for October 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 11729 Port Road, Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–48	D4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2019–24128 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. (Chickasaw, AL) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc. (Chickasaw, AL), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Chickasaw, AL), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 15, 2019.

DATES: Intertek USA, Inc. (Chickasaw, AL) was approved and accredited as a commercial gauger and laboratory as of May 15, 2019. The next triennial inspection date will be scheduled for May 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 109 Sutherland Drive, Chickasaw, AL 36611, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Intertek USA, Inc. (Chickasaw, AL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Intertek USA, Inc. (Chickasaw, AL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D 4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24142 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc. (Nederland, TX), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Nederland, TX), has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of March 14, 2019.

DATES: Camin Cargo Control, Inc., was accredited and approved as a commercial gauger and laboratory as of March 14, 2019. The next triennial inspection date will be scheduled for March 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1550 Industrial Park Dr., Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of crude Petroleum and Petroleum Products.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.

CBPL No.	ASTM	Title
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D5002	Density of Crude Oils by Digital Density Meter.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the website listed below for the current CBP Approved Gaugers and Accredited Laboratories List. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24143 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc. (Kenner, LA), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Kenner, LA), has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 10, 2019.

DATES: Camin Cargo Control, Inc., was accredited and approved as a commercial gauger and laboratory as of April 10, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 2844 Sharon Street, Suite B, Kenner, LA 70062, has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of crude Petroleum and Petroleum Products.
27–02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D5002	Density of Crude Oils by Digital Density Meter.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the website listed below for the current CBP Approved Gaugers and Accredited Laboratories List. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 23, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–24144 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2011–0008]

Aviation Security Advisory Committee (ASAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee management; notice of Federal Advisory Committee meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Aviation Security Advisory Committee (ASAC) to discuss issues listed in the Meeting Agenda section below. This meeting will be open to the public as stated in the Summary section below.

DATES: The Committee will meet on Tuesday, December 10, 2019, from 9:00 a.m. to 12:00 p.m. This meeting may end early if all business is completed.

ADDRESSES: The meeting will be held at TSA Headquarters, 601 12th Street South, Arlington, VA 20598–6028.

FOR FURTHER INFORMATION CONTACT: Tamika McCree Elhilali, Aviation Security Advisory Committee Designated Federal Official, Transportation Security Administration (TSA–28), 601 South 12th Street, Arlington, VA 20598–6028, *ASAC@tsa.dhs.gov,* 571–227–2632.

SUPPLEMENTARY INFORMATION:

Summary

Notice of this meeting is given in accordance with the Aviation Security Stakeholder Participation Act, codified at 49 U.S.C. 44946. Pursuant to 49 U.S.C. 44946(f), ASAC is exempt from the Federal Advisory Committee Act (5 U.S.C. App.). The ASAC provides advice and industry perspective to the Administrator of TSA on aviation security matters, including the development, refinement, and implementation of policies, programs, rulemaking, and security directives pertaining to aviation security.

The meeting will be open to the public and will focus on items listed in the ''Meeting Agenda'' section below. Members of the public, all non-ASAC members, and non-TSA staff must register in advance with their full name and date of birth to attend. Due to space constraints, the meeting is limited to 75 people, including ASAC members and staff, on a first-to-register basis. Attendees are required to present government-issued photo identification to verify identity.

In addition, members of the public must make advance arrangements, as stated below, to present oral or written statements specifically addressing issues pertaining to the items listed in the Meeting Agenda section below. The public comment period will begin at approximately 11:00 a.m., depending on the meeting progress. Speakers are requested to limit their comments to three minutes. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 20, 2019, to register to attend the meeting and/or to present oral or written statements addressing issues pertaining to the items listed in the Meeting Agenda section below. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Meeting Agenda

The Committee will meet to discuss items listed in the agenda below:

- Legislative Update
- Subcommittee and Work Group briefings on calendar year (CY) 2019 activities, key issues, and areas of focus for CY 2020:
  - Air Cargo
  - Airlines
  - Airports
  - General Aviation
  - Insider Threat
  - International Aviation
  - Security Technology
- Public Comments
- Discussion of the CY 2020 Committee Agenda
- Closing Comments and Adjournment

Dated: October 29, 2019.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2019–24087 Filed 11–4–19; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0038]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition To Remove the Conditions on Residence

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 5, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov*. All submissions received must include the agency name and the OMB Control Number 1615–0038 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number;

comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 19, 2019, at 84 FR 28575, allowing for a 60-day public comment period. USCIS did receive three comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0008 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–751; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on Form I–751 is used by U.S. Citizenship and Immigration Services (USCIS) to verify the alien's status and determine whether he or she is eligible to have the conditions on his or her status removed. Form I–751 serves the purpose of standardizing requests for benefits and ensuring that basic information required to assess eligibility is provided by petitioners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–751 is 153,000 and the estimated hour burden per response is 4.57 hours; the estimated total number of respondents for the information collection biometrics is 306,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,057,230 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $19,698,750.

Dated: October 30, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–24073 Filed 11–4–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2019–N090; FXGO1664091HCC0–FF09D00000–190]

Hunting and Shooting Sports Conservation Council; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Hunting and Shooting Sports Conservation Council (Council), in accordance with the Federal Advisory Committee Act. The Council's purpose is to provide recommendations to the Federal Government, through the Secretary of the Interior and the Secretary of Agriculture, regarding policies and endeavors that benefit wildlife resources; encourage partnership among the public; sporting conservation organizations; and Federal, State, tribal, and territorial governments; and benefit recreational hunting and recreational shooting sports. The meeting is open to the public.

DATES:

Meeting: Wednesday, November 20, 2019, from 8:30 a.m. to 4:30 p.m. Eastern Standard Time. The meeting is open to the public.

Deadline for Attendance or Participation: For security purposes, signup or request for accommodations is required no later than November 15, 2019. For more information, contact the Council Designated Federal Officer (**FOR FURTHER INFORMATION CONTACT**). For more information regarding participation during the meeting, see Public Input under **SUPPLEMENTARY INFORMATION**.

Other Deadlines: For a summary of all deadlines related to this meeting, including registration, requests for accommodation, and comment submission, please see Public Input under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Meeting Location:* U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240.

Comment Submission: You may submit written comments in advance of the meeting by emailing them to the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Designated Federal Officer, by email at *doug_hobbs@fws.gov,* by telephone at 703–358–2336, via the Federal Relay Service at 800–877–8339, or by U.S. mail or hand-delivery at the U.S. Fish and Wildlife Service, MS:EA, 5275 Leesburg Pike, Falls Church, Virginia 22041.

SUPPLEMENTARY INFORMATION: The Council was established to further the provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd), other Acts applicable to specific bureaus, and Executive Order 13443 (August 16, 2007), ''Facilitation of Hunting Heritage and Wildlife Conservation.'' The Council's purpose is to provide recommendations to the Federal Government, through the Secretary of the Interior and the Secretary of Agriculture, regarding policies and endeavors that (a) benefit wildlife resources; (b) encourage partnership among the public; sporting conservation organizations; and Federal, State, tribal, and territorial governments; and (c)

benefit recreational hunting and recreational shooting sports.

Meeting Agenda

- Council subcommittee reports.
- Update from the Department of the Interior and Department of Agriculture and bureaus from both agencies regarding efforts to create or expand hunting and recreational shooting opportunities on Federal lands.
- Update from Federal agencies on efforts to implement Council recommendations.
- Consideration of subcommittee reports and discussion of possible recommendations.
- Public comment period.
- Other miscellaneous Council business.

The final agenda and other related meeting information will be posted on the Council website at *https://www.fws.gov/hsscc*. The Designated Federal Officer will maintain detailed minutes of the meeting, which will be posted for public inspection within 90 days after the meeting at *https://www.fws.gov/hsscc*.

Public Input

If you wish to	You must contact the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than
Request special accommodations	November 13, 2019.
Submit written information before the meeting for the Council to consider during the meeting	November 15, 2019.
Provide a public comment during the meeting	November 15, 2019.
Submit a copy of public comment or expanded comment, or to submit comment because time constraints prevented presentation during the meeting.	Up to 30 days after the meeting date.

Submitting Written Information

Interested members of the public may submit relevant information for the Council to consider during the meeting. Written statements must be received by the Council Designated Federal Officer no later than the date in Public Input so that the information may be made available to the Council for their consideration prior to the meeting. Written statements must be supplied to the Council Designated Federal Officer via mail (for signed hard copies) or email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file) (see **FOR FURTHER INFORMATION CONTACT**).

Giving an Oral Presentation

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the Council Designated Federal Officer, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this meeting. Registered speakers who wish to expand upon their public comment, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Council Designated Federal Officer up to 30 days following the meeting. Requests to address the Council during the meeting will be accommodated in the order the requests are received.

Accommodations

The Service is committed to providing access to this meeting to all participants. Please direct all requests for accommodations to Douglas Hobbs by close of business on the date in Public Input. If you are hearing impaired or speech impaired, contact Douglas Hobbs via the Federal Relay Service at 800–877–8339.

Availability of Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Matthew Huggler,

Acting Assistant Director—External Affairs.

[FR Doc. 2019–24147 Filed 11–4–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20MR00G74E400; OMB Control Number 1028–0098/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Nonindigenous Aquatic Species Sighting Reporting Form and Alert Registration Form

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 5, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–0098 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Matthew Neilson by email at *mneilson@usgs.gov,* or by telephone at (352) 264–3519. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 15,

2019 (84 FR 33776). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: More than 6,500 nonindigenous species are now established in the United States, posing risks to native species, valued ecosystems, and human and wildlife health. These invasive species extract a huge cost, an estimated $120 billion per year, to mitigate their harmful impacts. The current annual environmental, economic, and health-related costs of invasive species exceed those of all other natural disasters combined.

Through its Invasive Species Program (*http://www.usgs.gov/ecosystems/invasive_species/*), the U.S. Geological Survey (USGS) plays an important role in Federal efforts to combat invasive species in natural and semi-natural areas through early detection and assessment of newly established invaders; monitoring of invading populations; and improving understanding of the ecology of invaders and factors in the resistance of habitats to invasion. The USGS provides the tools, technology, and information supporting efforts to prevent, contain, control, and manage invasive species nationwide. To meet user needs, the USGS also develops methods for compiling and synthesizing accurate and reliable data and information on invasive species for inclusion in a distributed and integrated web-based information system.

As part of the USGS Invasive Species Program, the Nonindigenous Aquatic Species (NAS) database (*http://nas.er.usgs.gov/*) functions as a repository and clearinghouse for occurrence information on nonindigenous aquatic species from across the United States. It contains locality information on approximately 1,300 species of vertebrates, invertebrates, and vascular plants introduced since 1850. Taxa include foreign species as well as those native to North America that have been transported outside of their natural range. The NAS website provides immediate access to new occurrence records through a real-time interface with the NAS database. Visitors to the website can use a set of predefined queries to obtain lists of species according to state or hydrologic basin of interest. Fact sheets, distribution maps, and information on new occurrences are continually posted and updated. Dynamically generated species distribution maps show the spatial accuracy of the locations reported, population status, and links to more information about each report.

Title of Collection: Nonindigenous Aquatic Species Sighting Reporting Form and Alert Registration Form.

OMB Control Number: 1028–0098.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and local government employees, university personnel, and private individuals.

Total Estimated Number of Annual Respondents: We estimate approximately 350 respondents per year for the sighting report form (some respondents will submit multiple reports per year), and 50 respondents (*i.e.,* new registrations) per year for the alert registration form.

Total Estimated Number of Annual Responses: We estimate 600 responses per year for the sighting report form, and 50 responses (*i.e.,* new registrations) per year for the alert registration form.

Estimated Completion Time per Response: We estimate 3 minutes for the sighting report form, and 1 minute for the alert registration form.

Total Estimated Number of Annual Burden Hours: We estimate 30 hours for the sighting report form, and 1 hour for the alert registration form; a total of 31 hours for the two forms.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Kenneth Rice,

USGS, Center Director, Wetland and Aquatic Research Center.

[FR Doc. 2019–24075 Filed 11–4–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK930000.L13100000.EI0000.241A]

Notice of 2019 National Petroleum Reserve in Alaska Oil and Gas Lease Sale and Notice of Availability of the Detailed Statement of Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office will hold an oil and gas lease sale bid opening for 350 tracts in the National Petroleum Reserve in Alaska (NPR–A).

DATES: The oil and gas lease sale bid opening will be at 10 a.m. (AKST) on Wednesday, December 11, 2019. The BLM must receive all sealed bids by 4 p.m. (AKST) Monday, December 9, 2019. The Detailed Statement of Sale for the 2019 NPR–A Oil and Gas Lease Sale will be available to the public on November 5, 2019.

ADDRESSES: Sealed bids must be received at the BLM Alaska State Office, ATTN: Carol Taylor (AK932); 222 West 7th Avenue, #13; Anchorage, Alaska 99513–7504. The Detailed Statement of Sale is available at the BLM Alaska website at *https://www.blm.gov/alaska,* and copies are available from the BLM Alaska Public Information Center (Public Room), 222 West 7th Avenue, #13; Anchorage, Alaska 99513–7504; telephone 907–271–5960.

FOR FURTHER INFORMATION CONTACT: Wayne Svejnoha, Energy and Minerals Branch Chief, at 907–271–4407. People 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, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The December 2019 NPR–A Oil and Gas Lease Sale will include 350 tracts

(approximately 3.98 million acres) available for leasing under the NPR–A Integrated Activity Plan/Environmental Impact Statement Record of Decision (ROD) finalized in February 2013.

The opening and reading of the bids for the 2019 NPR–A lease sale will be available via video livestreaming at *http://www.blm.gov/live.*

The Detailed Statement of Sale includes a description of the areas the BLM is offering for lease, as well as the lease terms, conditions, special stipulations, required operating procedures, and directions about how to submit bids. If you plan to submit a bid(s), please note that all bids must be sealed in accordance with the provisions identified in the Detailed Statement of Sale.

The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid.

Authority: 43 CFR 3131.4–1 and 42 U.S.C. 6506a.

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2019–24113 Filed 11–4–19; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[18X LLNMA01400 L12320000.AL0000 LVRDNM030000]

Notice of Temporary Closure, Kasha-Katuwe Tent Rocks National Monument

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Notice is hereby given that under the authority of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Kasha-Katuwe Tent Rocks Resource Management Plan (RMP), Presidential Proclamation 7394, and other authorities, the Kasha-Katuwe Tent Rocks National Monument (Monument) will be temporarily closed November 12–15, 2019, for facility improvement installation.

DATES: The temporary closure will be in effect November 12–15, 2019. Upon completion of the facility installation, the Monument will reopen as normal. This temporary closure is compliant with the Monument RMP and Presidential Proclamation 7394.

FOR FURTHER INFORMATION CONTACT: Danita Burns, District Manager, Bureau of Land Management Albuquerque District Office, 100 Sun Avenue NE, Suite 330, Pan American Building, Albuquerque, New Mexico 87109; 505–761–8700.

SUPPLEMENTARY INFORMATION: The BLM will post temporary closure signs a week prior to a closure at the main entry to the Monument. In addition, a temporary closure notice with all applicable dates will be posted on the BLM website: *www.blm.gov/visit/kktr.*

The Monument was designated on January 17, 2001, by Presidential Proclamation 7394 to provide opportunities for visitors to observe, study, and experience the geologic processes and cultural and biological objects of interest found in the area, as well as to protect these resources.

Closure: During the temporary closure, public access is prohibited.

Exceptions: The temporary closure order does not apply to persons performing authorized BLM construction, planning, maintenance, and/or emergency or law enforcement activities.

Penalties: Any person who violates this temporary closure or these restrictions may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.07, or both. In accordance with 43 CFR 8365.17, state or local officials may also impose penalties for violations of New Mexico law.

During these closure dates only BLM planning, administrative, and maintenance activities will be authorized, and no public access will be granted.

(Authority: FLPMA, the Kasha-Katuwe Tent Rocks RMP, Presidential Proclamation 7394, 43 CFR 8364.1, and 43 U.S.C. 1701 *et seq.*)

Danita Burns,

District Manager, Albuquerque District.

[FR Doc. 2019–24112 Filed 11–4–19; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 19X L13100000.PP0000]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 126064, NMNM 130871, NMNM 130872, NMNM 130873, NMNM 121491, NMNM 119270, NMNM 116002, NMNM 010192, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Mineral Leasing Act of 1920 as amended, COG Operating LLC., Keohane, Inc., CD Ray, Marathon Oil Permian LLC., JTD Resources LLC, and Chevron USA Inc., timely filed a petition for reinstatement of competitive oil and gas leases NMNM 119270, NMNM 010192, NMNM 116002 in Eddy County, New Mexico, and NMNM 126064, NMNM 130871, NMNM 130872, NMNM 130873, NMNM 121491 in Lea County, New Mexico. The lessees paid the required rentals accruing from the date of termination. No leases were issued that affect these lands. The Bureau of Land Management proposes to reinstate these leases.

FOR FURTHER INFORMATION CONTACT: Julieann Serrano, Supervisory Land Law Examiner, Branch of Adjudication, Bureau of Land Management New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508, (505) 954–2149, *jserrano@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, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessees agree to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. Each lessee agrees to additional or amended stipulations. Each lessee paid the $500 administration fee for the reinstatement of the lease and $159 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920. The BLM is proposing to reinstate the leases, effective the date of termination subject to the:

- Original terms and conditions of the lease;
- Additional and amended stipulations;
- $500 Administrative fee for reinstatement of the lease;
- Increased rental of $10 per acre;
- Increased royalty of 16⅔ percent; and
- $159 cost of publishing this Notice.

(Authority: 43 CFR 3108.2–3)

Julieann Serrano,

Supervisory, Land Law Examiner.

[FR Doc. 2019–24117 Filed 11–4–19; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L12200000.DD0000.LLCAD06000.19X (MO#4500135781)]

Notice of Temporary Closure on Public Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Palm Springs-South Coast Field Office will temporarily close and restrict uses of certain public land surrounding the Bradshaw Trail in Riverside County, California, to all public use to provide for public safety at the site. Notice is hereby given that identified public lands administered by the Palm Springs-South Coast Field Office, BLM, are temporarily closed to all public entry.

DATES: This temporary closure will be in effect at 12:01 a.m., January 6, 2020, through 11:59 p.m., February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Douglas Herrema, Field Manager, 1201 Bird Center Drive, Palm Springs, CA 92262; telephone: 760–833–7100; email: *dherrema@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 Mr. Herrema during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This closure affects public lands north of the Bradshaw Trail, including the trail itself, a county maintained roadway in Riverside County, California. The legal description of the affected public lands is:

San Bernardino Meridian

T. 7 S., R. 12 E.,
Sec. 36, lots 3, 4, 6, and 7.
T. 8 S., R. 12 E.,
Sec. 5, lots 6 through 10, 14, 15, 24, and 25.
T. 7 S., R. 13 E.,
Sec. 21, lots 1, 2, and 4.
T. 7 S., R. 14 E.,
Sec. 19, lots 8, 9, 12, and 13;
Sec. 25, lots 1, 2, 5 through 8, 11, 12, and 13;
Sec. 27, lots 1, 2, 4, 5, 7, 8, 10, and 11, S½N½SE¼, and S½N½SW¼;
Sec. 29, lots 1, 2, 4, 5, 8 through 11, 13, 14, 17, and 18, NW¼SE¼NE¼, and S½SE¼NE¼;
Sec. 33, lots 2 and 4.
T. 7 S., R. 15 E.,
Sec. 33, lots 4, 5, 7, 8, 23, 24, and 26, NW¼SE¼NW¼, and W½NW¼SW¼NW¼NW¼.
T. 8 S., R. 15 E.,
Sec. 3, lots 1, 2, 5, 6, 9, 10, 12, and 13;
Sec. 11, lots 1, 2, and 3.

The area described is approximately 630 acres in Riverside County, California.

The closure is necessary because of public health and safety risks caused by the potential for unknown unexploded ordnance and other hazardous materials located on the lands. The approximate 630 acres of public lands were transferred to the Department of the Navy for inclusion in the Chocolate Mountain Aerial Gunnery Range and were used as a live-bombing and training facility. Pursuant to section 2966 of Subtitle E of Public Law 113–66, these acres are part of a larger relinquishment of lands (2,000 acres) to the Department of the Interior. The Department of the Navy is in the process of executing a response action plan to clean the contaminated parcels. Once the parcels are decontaminated, the BLM will reopen the lands to the public. The lands are closed to all forms of public entry, including dispersed camping, or other recreational activities on the above described lands.

Exceptions: Temporary closure restrictions do not apply to Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Enforcement: Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of California law.

(Authority: 40 CFR 1501.7)

Danielle Chi,

Deputy State Director, Resources and Fire.

[FR Doc. 2019–24114 Filed 11–4–19; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Notice on Outer Continental Shelf Oil and Gas Lease Sales; MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: List of Restricted Joint Bidders.

Pursuant to 42 U.S.C. 6213 and the Bureau of Ocean Energy Management (BOEM) regulatory restrictions on joint bidding, 30 CFR 556.511–515, the Director of BOEM is publishing a List of Restricted Joint Bidders. Any entity appearing on this list is limited in its ability to submit a joint bid. Specifically, an entity appearing within one of the following groups is restricted from bidding with any entity listed in any of the other groups on the List of Restricted Joint Bidders at all Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2019, through April 30, 2020.

This List of Restricted Joint Bidders is in effect for the period November 1, 2019, through April 30, 2020, and replaces the prior list published on June 6, 2018 (84 FR 26442), covering the period of May 1, 2019, through October 31, 2019.

Group I
BP America Production Company
BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.
Group II
Chevron Corporation
Chevron U.S.A. Inc.
Chevron Midcontinent, L.P.
Unocal Corporation
Union Oil Company of California
Pure Partners, L.P.
Group III
Eni Petroleum Co. Inc.
Eni Petroleum US LLC
Eni Oil US LLC
Eni Marketing Inc.
Eni BB Petroleum Inc.
Eni US Operating Co. Inc.
Eni BB Pipeline LLC
Group IV
Equinor ASA
Equinor Gulf of Mexico LLC
Equinor USA E&P Inc.
Group V
Exxon Mobil Corporation
ExxonMobil Exploration Company
Group VI
Shell Oil Company
Shell Offshore Inc.
SWEPI LP
Shell Frontier Oil & Gas Inc.
SOI Finance Inc.
Shell Gulf of Mexico Inc.
Group VII
Total E&P USA, Inc.

In addition to the entities listed above on the List of Restricted Joint Bidders, certain joint or single bids submitted by any entity may be disqualified, and rejected, by BOEM if that entity is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and natural gas liquids. *See* 30 CFR 556.512(b)–(d).

Authority: 42 U.S.C. 6213; and 30 CFR 556.511–556.515.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2019–24052 Filed 11–4–19; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–536]

Bulk Manufacturer of Controlled Substances Application: Organix, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 6, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 9, 2019, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801–2029 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
Heroin	9200	I
Morphine	9300	II

The company plans to synthesize the listed controlled substances for distribution to its customers. In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: October 18, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–24107 Filed 11–4–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–526]

Bulk Manufacturer of Controlled Substances Application: Noramco Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturer of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 6, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 6, 2019, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Codeine-N-oxide	9053	I
Dihydromorphine	9145	I
Hydromorphinol	9301	I
Morphine-N-oxide	9307	I
Amphetamine	1100	II
Methylphenidate	1724	II
Nabilone	7379	II
Phenylacetone	8501	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium extracts	9610	II
Opium fluid extract	9620	II
Opium tincture	9630	II
Opium, powdered	9639	II
Opium, granulated	9640	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to manufacture the listed controlled substances as an Active Pharmaceutical Ingredient (API) for supply to its customers. In reference to drug codes 7360 (marihuana) and 7370 (tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: October 22, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–24106 Filed 11–4–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–530]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as importers of schedule I and II controlled substances.

The companies listed below applied to be registered as an importers of various basic classes of schedule I and II controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for a hearing were submitted for these notices.

Companies	FR docket	Published
Catalent Pharma Solutions, LLC	84 FR 36945	July 30, 2019.
Research Triangle Institute	84 FR 36941	July 30, 2019.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable various basic classes of schedule I and II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying

each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I and II controlled substances to the above listed companies.

Dated: October 22, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–24105 Filed 11–4–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–527]

Bulk Manufacturer of Controlled Substances Application: Halo Pharmaceuticals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 6, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 19, 2019, Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981–1030 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Dihydromorphine	9145	I
Hydromorphone	9150	II

The company plans to manufacture Hydromorphone (9150) for distribution to its customers. Dihydromorphone (9145) is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution.

Dated: October 22, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–24108 Filed 11–4–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Comment Request; Requests for District Director Action

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Requests for District Director Action.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 6, 2020.

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 by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov*.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation, Division of Workers' Compensation, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov*.

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Longshore and Harbor Workers' Compensation Act (LHWCA) requires covered employers to secure the payment of compensation under the Act and its extensions by purchasing insurance from a carrier authorized by the Secretary of Labor to write Longshore Act Insurance, or becoming authorized self-insured employers. Each authorized insurance carrier (or carrier seeking authorization) is required to establish annually that its Longshore obligations are fully secured either through an applicable state guaranty (or analogous fund), a deposit of security with the Division of Longshore and Harbor Workers' Compensation (DLHWC), or a combination of both. Similarly, each authorized self-insurer (or employer seeking authorization) is required to fully secure its Longshore Act obligations by depositing security with DLHWC. These requirements are designed to assure the prompt and continued payment of compensation and other benefits by the responsible carrier or self-insurer to injured workers and their survivors. Forms LS–276, Application for Security Deposit Determination; LS–275–IC, Agreement and Undertaking (Insurance Carrier); and LS–275–SI, Agreement and Undertaking (Self-Insured Employer) are used to cover the submission of information by insurance carriers and self-insured employers regarding their ability to meet their financial obligations under the Longshore Act and its extensions. This information is currently approved through December 31, 2019. 33 U.S.C. 932 *et seq.* 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.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0005.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL 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—Office of Workers' Compensation Programs.

Type of Review: Extension Without Changes.

Title of Collection: Securing Financial Obligations under the Longshore and Harbor Workers' Compensation Act and its Extensions.

Form: LS–276, LS–275(IC), LS–275(SI).

OMB Control Number: 1240–0005.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 694.5.

Frequency: Annually.

Total Estimated Annual Responses: 694.5.

Estimated Average Time per Response: 15 minutes to 60 minutes.

Estimated Total Annual Burden Hours: 478.75 hours.

Total Estimated Annual Other Cost Burden: $11,126.15.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: October 4, 2019.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2019–24095 Filed 11–4–19; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0012]

Modification to the List of Appropriate NRTL Program Test Standards and the Scopes of Recognition of Several NRTLs

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to: (1) Add a new test standard to the Nationally Recognized Testing Laboratories (NRTL) Program's list of appropriate test standards and (2) update the scopes of recognition of several NRTLs.

DATES: The actions contained in this notice will become effective on November 5, 2019.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone: (202) 693–2110 or email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

The NRTL program recognizes organizations that provide product-safety testing and certification services to manufacturers. These organizations perform testing and certification for purposes of the program, to U.S. consensus-based product-safety test standards. The products covered by the NRTL program consist of those items for which OSHA safety standards require certification by a NRTL. The requirements affect electrical products and 38 other types of products. OSHA does not develop or issue these test standards, but generally relies on standards-development organizations (SDOs), which develop and maintain the standards using a method that provides input and consideration of views of industry groups, experts, users, consumers, governmental authorities and others having broad experience in the safety field involved.

A. Addition of New Test Standards to the NRTL List of Appropriate Test Standards

Periodically, OSHA will add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) Verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) Monitoring notifications issued by certain SDOs; (2) reviewing applications by NRTLs or applicants seeking recognition to include a new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties that a new test standard may be appropriate to add to its list of appropriate standards. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, covers a type of product that no standard previously covered, or is otherwise new to the NRTL Program.

B. SDO Deletion and Replacement of Test Standards

The NRTL program regulations require that appropriate test standards be maintained and current (29 CFR 1910.7(c)). A test standard withdrawn by a standards-development organization is no longer considered an appropriate test standard (Directive, App. C.XIV.B). It is OSHA's policy to remove recognition of withdrawn test standards by issuing a correction notice in the **Federal Register** for all NRTLs recognized for the withdrawn test standards. However, SDOs frequently will designate a replacement standard for standards they withdraw. OSHA will recognize a NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for the replacement test standard.

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in a NRTL scope are comparable (*i.e.,* are completely or substantially identical) to the requirements in the replacement test standard. If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard(s), the replacement test standard is comparable to the existing test standard(s), then OSHA can add the replacement test standard to affected NRTLs' scopes of recognition. If OSHA's analysis shows the replacement test

standard requires an additional or different technical capability, or the replacement test standard is not comparable to any existing test standards, each affected NRTL that seeks to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates technical capability.

C. Other Reasons for Removal of Test Standards From the NRTL List of Appropriate Test Standards

OSHA may choose to remove a test standard from the NRTL list of appropriate test standards based on an internal review. The review will determine if the test standards conform to the definition of an appropriate test standard defined in NRTL program regulations and policy. There are several reasons for removing a test standard based on this review. First, a document that provides the methodology for a single test is a test method rather than an appropriate test standard (29 CFR 1910.7(c)). As stated above, a test standard must specify the safety requirements for a specific type of product(s). A test method, however, is a ''specified technical procedure for performing a test'' (Directive, App. B). As such, a test method is not an appropriate test standard. While a NRTL may use a test method to determine if certain safety requirements are met, a test method is not itself a safety requirement for a specific product category.

Second, a document that focuses primarily on usage, installation, or maintenance requirements would also not be considered an appropriate test standard (Directive, App. D.IV.B). In some cases, however, a document may also provide safety test specifications in addition to usage, installation, and maintenance requirements. In such cases, the document would be retained as an appropriate test standard based on the safety test specifications.

Finally, a document may not be considered an appropriate test standard if the document covers products for which OSHA does not require testing and certification (Directive, App. D.IV.A). Similarly, a document that covers electrical-product components would not be considered an appropriate test standard. These documents apply to types of components that have limitation(s) or condition(s) on their use, in that they are not appropriate end-use products. These documents also specify that these types of components are for use *only* as part of an end-use product. NRTLs, however, evaluate such components only in the context of evaluating whether end-use products requiring NRTL approval are safe for use in the workplace. Testing such components alone would not indicate that the end-use products containing the components are safe for use. Accordingly, as a matter of policy, OSHA considers that documents covering such components are not appropriate test standards under the NRTL program. OSHA notes, however, that it is not proposing to delete from NRTLs' scopes of recognition any test standards covering end-use products that contain such components.[1]

In addition, OSHA notes that, to conform to a test standard covering an end-use product, a NRTL must still determine that the components in the product comply with the components' specific test standards. In making this determination, NRTLs may test the components themselves, or accept the testing of a qualified testing organization that a given component conforms to its particular test standard. OSHA reviews each NRTL's procedures to determine which approach the NRTL will use to address components, and reviews the end-use product testing to verify the NRTL appropriately addresses that product's components.

D. Proposed Modification to the NRTL List of Appropriate Test Standards and the Scopes of Recognition of Several NRTLs

In a February 7, 2019, **Federal Register** notice (84 FR 2587, referred to in this notice as ''Proposed Modification,'' and available at *www.regulations.gov* under Docket ID OSHA–2013–0012–0011), OSHA proposed: Adding one standard to the NRTL list of appropriate test standards; deleting a withdrawn and deleted test standard from the NRTL list of appropriate test standards; incorporating into the NRTL list of appropriate test standards a replacement test standard for the withdrawn and deleted test standard; and updating the scopes of recognition of several NRTLs. OSHA received no comments, and in this notice, takes final action on its proposals.

II. Final Decision To Add a New Test Standard to the NRTL Program's List of Appropriate Test Standards

In this notice, OSHA announces its final decision to add one new test standard, UL 61010–2–020, Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges, to the NRTL program's list of appropriate test standards. In the Proposed Modification, OSHA proposed adding the same test standard to the NRTL Program's List of Appropriate Test Standards, as described in Table 1:

TABLE 1—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization.	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.

III. Final Decision To Modify Affected NRTLs' Scopes of Recognition

In this notice, OSHA announces the final decision to update the scopes of recognition of several NRTLs. The tables in this section (Table 2 thru Table 5) list, for each affected NRTL, the test standard that OSHA will delete from its scope of recognition and, when applicable, the test standard that OSHA will incorporate into its scope of

[1] OSHA notes also that some types of devices covered by these documents, such as capacitors and transformers, may be end-use products themselves, and tested under other test standards applicable to such products. For example, the following test standard covers transformers that are end-use products: UL 1562 Standard for Transformers, Distribution, Dry-Type—Over 600 Volts. OSHA is not proposing to delete such test standards from NRTLs' scopes of recognition.

recognition to replace withdrawn (and deleted) test standard.

TABLE 2—TEST STANDARD OSHA WILL REMOVE AND REPLACE FROM THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION

Test standard to be removed	Reason for removal	Replacement test standard
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization.	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.

TABLE 3—TEST STANDARD OSHA WILL REMOVE AND REPLACE FROM THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES, NA

Test standard to be removed	Reason for removal	Replacement test standard
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization.	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.

TABLE 4—TEST STANDARD OSHA WILL REMOVE AND REPLACE FROM THE SCOPE OF RECOGNITION OF TUV SUD AMERICA, INC.

Test standard to be removed	Reason for removal	Replacement test standard
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization.	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.

TABLE 5—TEST STANDARD OSHA WILL REMOVE AND REPLACE FROM THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORY, INC.

Test standard to be removed	Reason for removal	Replacement test standard
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization.	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.

OSHA will incorporate the modifications to each NRTL Scope of Recognition on the informational web pages. These web pages detail the scope of recognition for each NRTL, including the test standards the NRTL may use to test and certify products under OSHA's NRTL Program. OSHA also will add, to the Appropriate Test Standards web page, those test standard added to the NRTL list of appropriate test standards, and add, to the Standards No Longer Recognized web page, those test standards that OSHA no longer recognizes or permits under the NRTL program. Access to these web pages is available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby updates the NRTL List of Appropriate Test Standards, subject to the limitation and conditions specified above.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on October 30, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–24093 Filed 11–4–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Applications for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SGS North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL)

and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add three test standards to the NRTL Program's list of appropriate test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before November 20, 2019.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2006–0040, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2006–0040). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency 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, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

Extension of comment period: Submit requests for an extension of the comment period on or before November 20, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that SGS North America, Inc. (SGS), is applying for expansion of the current recognition as a NRTL. SGS requests the addition of twelve (12) test standards to the NRTL scope of recognition, including three that OSHA proposes to add to the NRTL Program's list of appropriate test standards.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes: (1) The type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS currently has nine facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia. A complete list of SGS sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/tuv.html.*

II. General Background on the Application

SGS submitted two applications, one dated February 14, 2018 (OSHA–2006–0040–0049), another dated October 2, 2018 (OSHA–2006–0050), which was revised on March 9, 2019 (OSHA–2006–0040–0051), to expand its scope of recognition to include the addition of twelve test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 lists the appropriate test standards found in SGS's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 22	Standard for Amusement and Gaming Machines.
UL 430	Electric Waste Disposers.
UL 466	Standard for Electric Scales.
UL 574	Standard for Electric Oil Heaters.
UL 826	Standard for Electric Clocks.
UL 1740	Robots and Robotic Equipment.
UL 2524 *	In-Building 2-Way Emergency Radio Communication Enhancement Systems.
ANSI Z83.26 *	Gas-Fired Outdoor Infrared Patio Heaters.
ANSI Z21.58	Outdoor Cooking Gas Appliances.
ANSI Z21.89 *	Outdoor Cooking Specialty Gas Appliances.
ANSI Z83.7	American National Standard/CSA Standard for Gas-Fired Construction Heaters.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
ANSI Z21.1	Household Cooking Gas Appliances.

* Represents the standards that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standards to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) Monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add three new test standards to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA preliminarily determined that these test standards are appropriate test standards and proposes to include them in the NRTL Program's list of appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—TEST STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 2524*	In-Building 2-Way Emergency Radio Communication Enhancement Systems.
ANSI Z83.26*	Gas-Fired Outdoor Infrared Patio Heaters.

TABLE 2—TEST STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS—Continued

Test standard	Test standard title
ANSI Z21.89*	Outdoor Cooking Specialty Gas Appliances.

III. Preliminary Findings on the Applications

SGS submitted acceptable applications for expansion of its scope of recognition. OSHA's review of the application files, and pertinent documentation, indicate that SGS can meet the requirements prescribed by 29 CFR 1910.7 for expanding its scope of recognition to include the addition of these twelve test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of SGS's applications.

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for expansion of the recognition as a NRTL. OSHA additionally welcomes comments on the proposal to add three additional test standards to the NRTL Program's list of appropriate test standards. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at: *http://www.regulations.gov* under Docket No. OSHA–2006–0040.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health whether to grant SGS's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

IV. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on October 30, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–24094 Filed 11–4–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0005]

Preparations for the 38th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

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

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that on Tuesday, November 12, 2019, OSHA will conduct a public meeting to discuss proposals in preparation for the 38th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held December 11 through December 13, 2019, in Geneva, Switzerland. OSHA, along with the U.S. Interagency Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting. OSHA also will give an update on the Regulatory Cooperation Council (RCC).

DATES: The PHMSA public meeting will be held on November 12, 2019, 9:00 a.m. to 12:00 p.m., ET. The OSHA public meeting will be held November 12, 2019, 1:00 p.m. to 4:00 p.m., ET.

ADDRESSES: Both meetings will be held at the DOT Headquarters Conference Center, West Building, Conference Room 8, 9, 10, 1200 New Jersey Avenue SE, Washington, DC 20590.

Written Comments: Interested parties may submit comments by November 11, 2019, on the Working and Informal Papers for the 38th session of the UNSCEGHS to the docket established for International/Globally Harmonized System (GHS) efforts at: *http://www.regulations.gov,* Docket No. OSHA–2016–0005.

Registration To Attend and/or To Participate in the Meeting: DOT requests that attendees pre-register for these meetings by completing the form at: *https://www.surveymonkey.com/r/RNTWXG8.*

Attendees may use the same form to pre-register for both meetings. Failure to pre-register may delay your access into the DOT Headquarters building. Additionally, if you are attending in person, arrive early to allow time for security checks necessary to access the building. Conference call-in and ''Skype meeting'' capability will be provided for both meetings. Information on how to access the conference call and ''Skype meeting'' will be posted when available at: *https://www.phmsa.dot.gov/international-program/international-program-overview* under Upcoming Events. This information will also be posted on OSHA's Hazard Communication website on the international tab at: *https://www.osha.gov/dsg/hazcom/hazcom_international.html#meeting-notice.*

FOR FURTHER INFORMATION CONTACT:

At the Department of Transportation: Please contact Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590, telephone: (202) 366–8553.

At the Department of Labor: Please contact Ms. Maureen Ruskin, OSHA Directorate of Standards and Guidance, Department of Labor, Washington, DC 20210, telephone: (202) 693–1950, email: *ruskin.maureen@dol.gov.*

SUPPLEMENTARY INFORMATION: On Tuesday, November 12, 2019, the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (See 84 FR 11865, 2019–05892) to discuss proposals in preparation for the 56th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCE TDG) to be held December 2 through December 11, 2019, in Geneva, Switzerland. During this meeting, PHMSA is also requesting comments relative to potential new work items that may be considered for inclusion in its international agenda. PHMSA will also provide an update on recent actions to enhance transparency and stakeholder interaction through improvements to the international standards portion of its website.

The OSHA Meeting

OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting.

General topics on the agenda include:

- Review of Working Papers
- Correspondence Group updates
- Regulatory Cooperation Council (RCC) update

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division website located at the following web address: *http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html.*

The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 38th session of the UNSCEGHS are located at: *https://www.unece.org/fr/trans/main/dgdb/dgsubc4/c42019.html.*

Informal Papers submitted to the UNSCEGHS provide information for the Sub-Committee and are used either as a mechanism to provide information to the Sub-Committee or as the basis for future Working Papers. Informal Papers for the 38th session of the UNSCEGHS are located at: *https://www.unece.org/fr/trans/main/dgdb/dgsubc4/c4inf38.html.*

The PHMSA Meeting

The **Federal Register** notice and additional detailed information relating to PHMSA's public meeting will be available upon publication at: *http://www.regulations.gov* (Docket No. PHMSA–2018–0113, Notice No. 2018–23), and on the PHMSA website at: *https://www.phmsa.dot.gov/international-program/international-program-overview.*

The primary purpose of PHMSA's meeting is to prepare for the 56th session of the UNSCE TDG. This session of the UNSCE will consider proposals for the 21st Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods* (Model Regulations), which may be implemented into relevant domestic, regional, and international regulations from January 1, 2021. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations (UN) Transport Division's website at: *https://www.unece.org/trans/main/dgdb/dgsubc3/c32019.html* and *https://www.unece.org/trans/main/dgdb/dgsubc3/c3inf56.html.*

During this meeting, PHMSA is also soliciting input relative to preparing for the 56th session of the UNSCE TDG as well as potential new work items which may be considered for inclusion in its international agenda. Following the 56th session of the UNSCE TDG, a copy of the Sub-Committee's report will be available at the UN Transport Division's website at: *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.*

Additional information regarding the UNSCE TDG and related matters can be found on PHMSA's website at: *https://www.phmsa.dot.gov/international-program/international-program-overview.*

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice under the authority granted by sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC, on October 28, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–24084 Filed 11–4–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

AGENCY: Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden

(time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Death Gratuity Forms CA–40, CA–41, and CA–42. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 6, 2020.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Anjanette Suggs, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax, (202) 354–9660, or email to *suggs.anjanette@dol.gov*. Please use only one method of transmission for comments (mail or email).

SUPPLEMENTARY INFORMATION:

I. Background

The DOL is requesting an approval of an extension of this information collection. This information collection is essential to the mission of DOL and the Office of Workers' Compensation Programs (OWCP), the information collected through forms CA–40, CA–41 and CA–42 is used by claims examiners in OWCP to determine a person's entitlement to any or all of the death gratuity payment provided by 5 U.S.C. § 8102a. The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, was enacted on January 28, 2008. Section 1105 of Public Law 110–181 amended the Federal Employees' Compensation Act (FECA) creating a new section, 5 U.S.C. 8102a effective upon enactment. This section establishes a FECA death gratuity benefit of up to $100,000 for eligible beneficiaries of federal employees and Non-Appropriated Fund Instrumentality (NAFI) employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. 5 U.S.C. 8102a also permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001 in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. 5 U.S.C. 8102a also allows federal employees to vary the order of precedence of beneficiaries or to name alternate beneficiaries. 20 CFR 10.909 and 10.911 provides that forms CA–40, CA–41, and CA–42 are used to designate beneficiaries and initiate the payment process for death gratuity benefits. See 5 U.S.C. 8145 and 8149.

Form CA–40 is an optional form that requests the information necessary from the employee to accomplish this variance and to name alternate beneficiaries only if the employee wishes to do so. Form CA–41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Further, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. CA–42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death.

II. Review Focus

The DOL is particularly interested in comments which:

* 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 submissions of responses.

III. Current Actions

The DOL seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Death Gratuity Forms.

OMB Number: 1240–0017.

Agency Number: CA–40, CA–41, and CA–42.

Affected Public: Individuals or households; Businesses or other for-profit.

Total Respondents: 4.

Total Annual Responses: 4.

Estimated Total Burden Hours: 3.

Estimated Time per Response: 30 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $84.

Total Burden Cost (operating/maintenance): $2.

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

Anjanette Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2019–24083 Filed 11–4–19; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 19–077]

NASA Datanaut Applicant Selection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—renewal of existing information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by January 6, 2020.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract: The collection of information supports the selection process of individuals to participate in the NASA Datanaut program. NASA's corps of Datanauts features leaders from across the data/maker/tech communities with diverse skill sets who use data in

innovative ways. This corps of creative thinkers are interested in engaging with NASA and pioneering the future of exploration-focused data science. Datanauts are citizens personally and/or professionally invested in the use and applications of NASA data. Members have unique early opportunities to test datasets and tools, uncover new use cases for NASA data, and have their visualization, application or storytelling work featured by NASA.

This information will be used by the NASA Datanaut administrative personnel, during the application selection process, to gain insight into the applicant's interest and skill level in data analysis and visualization. Information collected will be limited to full name, city, state and country of origin, email, biography, background experience and biography.

II. Methods of Collection: Electronic.

III. Data:

Title: NASA Datanaut Application.

OMB Number:

Type of Review: Renewal of Existing Information Collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2.

Estimated Number of Respondents per Activity: 500.

Annual Responses: 1,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 333.

Estimated Total Annual Cost: $5,000.

IV. Request for Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

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

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2019–24104 Filed 11–4–19; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0219]

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 October 8, 2019, to October 21, 2019. The last biweekly notice was published on October 22, 2019.

DATES: Comments must be filed by December 5, 2019. A request for a hearing or petitions for leave to intervene must be filed by January 6, 2020.

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–2019–0219. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual 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–2019–0219, 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–2019–0219.
- *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–2019–0219, 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 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.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 4, 2019. A publicly available version is in ADAMS under Accession No. ML19247B321.

Description of amendment request: The amendments would modify Technical Specification (TS) 3.0, ''Surveillance Requirement (SR) Applicability,'' to correct a typographical error introduced by License Amendment Nos. 235 and 231. Specifically, SR 3.0.5 is proposed to be revised to refer to Limiting Condition for Operation (LCO) 3.0.9, instead of 3.0.8. The proposed change is administrative in nature.

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 change to revise SR 3.0.5 to refer to LCO 3.0.9 is administrative in nature and does not change the technical content of the TS. The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions or configurations of the facility. The proposed change does not alter or prevent the capability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating events within the assumed acceptance limits.

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.

The proposed change to revise SR 3.0.5 to refer to LCO 3.0.9 is administrative in nature and does not change the technical content of the TS. The proposed change does not alter the design requirements of any SSC or its function during accident conditions. The proposed change does not involve a physical alteration to the plant or any changes in methods governing normal plant operation. The proposed change does not alter any assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change to revise SR 3.0.5 to refer to LCO 3.0.9 is administrative in nature and does not change the technical content of the TS. The proposed change does not alter the way safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by the proposed change. The proposed change will not result in plant operation in a configuration outside the design basis and does not adversely affect systems that respond to safely shutdown the plant and maintain the plant in a safety shutdown condition.

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: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC., 550 South Tryon Street—DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station (Catawba), Units 1 and 2, York County, South Carolina

Date of amendment request: July 2, 2019. A publicly available version is in ADAMS under Accession No. ML19183A038.

Description of amendment request: The amendments would modify Technical Specification (TS) 3.4.3, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits.'' Specifically, the P/T limit curves in Figures 3.4.3–1 and 3.4.3–2 for Unit 1 would be updated since the existing Unit 1 curves are only applicable up to 30.7 full power effective years (EFPY), which is expected to be reached during Operating Cycle 26 (early 2021). The new Unit 1 (P/T) limit curves will be applicable until 42.7 EFPY. Although the proposed change only impacts Unit 1, the request is docketed under both Catawba, Units 1 and 2, since the TSs are common to both Units 1 and 2.

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 change revises TS 3.4.3 to reflect updated P/T limit curves in Figures 3.4.3–1 (UNIT 1 ONLY) and 3.4.3–2 (UNIT 1 ONLY) that are applicable until 42.7 EFPY. The proposed change does not involve physical changes to the plant or alter the reactor coolant system (RCS) pressure boundary (*i.e.,* there are no changes in operating pressure, materials or seismic loading). The proposed P/T limit curves and Adjusted Reference Temperature (ART) values for TS 3.4.3 with an applicability term of 42.7 EFPY provide continued assurance that the fracture toughness of the reactor pressure vessel (RPV) is consistent with analysis assumptions and NRC regulations. The methodology used to develop the proposed P/T limit curves provides assurance that the probability of a rapidly propagating failure will be minimized. The proposed P/T limit curves, with the applicability term of 42.7 EFPY, will continue to prohibit operation in regions where it is possible for brittle fracture of reactor vessel materials to occur, thereby assuring that the integrity of the RCS pressure boundary is maintained.

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.

The proposed change revises TS 3.4.3 to reflect updated P/T limit curves in Figures 3.4.3–1 (UNIT 1 ONLY) and 3.4.3–2 (UNIT 1 ONLY) that are applicable until 42.7 EFPY. The proposed change does not affect the design or assumed accident performance of any structure, system or component or

introduce any new modes of system operation or failure modes. Compliance with the proposed P/T limit curves will provide sufficient protection against brittle fracture of reactor vessel materials to assure that the RCS pressure boundary performs as previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change revises TS 3.4.3 to reflect updated P/T limit curves in Figures 3.4.3–1 (UNIT 1 ONLY) and 3.4.3–2 (UNIT 1 ONLY) that are applicable until 42.7 EFPY. CNS [Catawba Nuclear Station] complies with applicable regulations (*i.e.,* 10 CFR 50, Appendices G and H) and adheres to Nuclear Regulatory Commission (NRC)-approved methodologies (*i.e.,* Regulatory Guides 1.99 and 1.190) with respect to the proposed P/T limit curves in TS 3.4.3 in order to provide an adequate margin of safety to the conditions at which brittle fracture may occur. The proposed P/T limit curves for CNS Unit 1, with an applicability term of 42.7 EFPY, will continue to provide as assurance that the P/T limits are not exceeded.

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: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tryon Street—DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: August 15, 2019, as supplemented by letter dated September 12, 2019. Publicly-available versions are in ADAMS under Accession Nos. ML19227A397, and ML19255H995, respectively.

Description of amendment request: The amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program,'' which would revise the Technical Specification (TS) definitions of Channel Calibration and Channel Functional Test to allow the required frequency for testing these components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program.

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 change revises the TS definitions of Channel Calibration and Channel Functional Test to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. All components in the channel continue to be calibrated. The frequency at which a channel calibration is performed is not an initiator of any accident previously evaluated, so the probability of an accident is not affected by the proposed change. The channels surveilled in accordance with the affected definitions continue to be required to be operable and the acceptance criteria of the surveillances are unchanged. As a result, any mitigating functions assumed in the accident analysis will continue to be performed.

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 previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration and Channel Functional Test to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. [A] physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) [does not occur for this proposed change]. No credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases are introduced. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions.

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.

The proposed change revises the TS definitions of Channel Calibration and Channel Functional Test to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The Surveillance Frequency Control Program assures sufficient safety margins are maintained, and that that design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plants' licensing basis. The proposed change does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by method of determining surveillance test intervals under an NRC-approved licensee-controlled program.

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: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW, Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

IV. 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.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2 (Byron), Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1 (Clinton), DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3 (Dresden), Grundy County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2 (LaSalle), LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), Rock Island County, Illinois

Date of amendment request: November 1, 2018.

Brief description of amendments: The amendments revised the Technical Specifications for these facilities to eliminate secondary completion times. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–439, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation]'' (ADAMS Accession No. ML051860296). The amendment for the FitzPatrick also deleted an obsolete footnote for a one-time action.

Date of issuance: October 8, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Braidwood—203/203, Byron—209/209, Clinton—227, Dresden—262/255, FitzPatrick—329, LaSalle—239/225, and Quad Cities—275/270. A publicly-available version is in ADAMS under Accession No. ML19266A527. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–19, DPR–25, DPR–59, NPF–11, NPF–18, DPR–29, and DPR–30: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 30, 2019 (84 FR 493).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated October 8, 2019.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (Cook Nuclear Plant), Unit Nos. 1 and 2 (CNP), Berrien County, Michigan

Date of amendment request: December 11, 2018.

Brief description of amendments: The amendments revised the Cook Nuclear Plant Environmental Protection Plan to reflect a Michigan state requirement to obtain and maintain a Renewable Operating Permit for the possession and operation of specified stationary sources of air pollutants

Date of issuance: October 15, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—347; Unit 2—328. A publicly-available version is in ADAMS under Accession No. ML19259A054; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–58 and DPR–74: The amendments revised the Renewed Facility Operating Licenses, including the Environmental Technical Specifications included as Appendix B.

Date of initial notice in ***Federal Register:*** March 26, 2019 (84 FR 11339).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 28th day of October 2019.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–23805 Filed 11–4–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 4, 11, 18, 25, December 2, 9, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 4, 2019

There are no meetings scheduled for the week of November 4, 2019.

Week of November 11, 2019—Tentative

Wednesday, November 13, 2019

9:00 a.m.—Briefing on Security Issues (Closed Ex. 1)

Week of November 18, 2019—Tentative

There are no meetings scheduled for the week of November 18, 2019.

Week of November 25, 2019—Tentative

There are no meetings scheduled for the week of November 25, 2019.

Week of December 2, 2019—Tentative

Wednesday, December 4, 2019

9:00 a.m.—Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Damaris Marcano: 301–415–7328)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Friday, December 6, 2019

10:00 a.m.—Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Larry Burkhart: 301–287–3775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

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 1st day of November 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–24208 Filed 11–1–19; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Reportable Events; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval of modifications to currently-approved information collections.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, collections of information under PBGC's regulation on Reportable Events and Certain Other Notification Requirements with modifications. This notice informs the public of PBGC's intent and solicits public comment on the collections of information.

DATES: Comments must be submitted on or before January 6, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the website instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov*.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to Reportable Events and Certain Other Notification Requirements. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided.

Copies of the collections of information and comments may be obtained without charge by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; faxing a request to 202–326–4042; or calling 202–326–4040 during normal business hours. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulation, forms, and instructions are available at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs (*cibinic.stephanie@pbgc.gov*; 202–229–6352), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026. TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–229–6352.

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and employer events to PBGC. The reporting requirements give PBGC notice of events that indicate plan or employer financial problems. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate a plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in PBGC's losses.

The provisions of section 4043 of ERISA have been implemented in PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043).

Form 10

Subparts B and C of the regulation deal with reportable events. PBGC has issued Forms 10 and 10-Advance and related instructions under subparts B and C (approved under OMB control number 1212–0013). PBGC is proposing to modify the Form 10 for the ''Failure to make required contributions'' reportable event to provide that if payment was made to satisfy a missed contribution, the filer must submit documentation of that payment, *e.g.,* a copy of the cancelled check or wire transfer, etc. Documentation is needed to give evidence that the missed contribution was made up and no risk to the plan remains before PBGC closes the event.

OMB approval of this collection of information expires February 28, 2022. PBGC intends to request that OMB extend its approval for three years, with modifications. 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.

PBGC estimates that it will receive 590 reportable event notices per year under subparts B and C of the reportable events regulation using Forms 10 and 10-Advance and that the average annual burden of this collection of information is 1,860 hours and $439,550.

Form 200

Section 303(k) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 430(k) of the Internal Revenue Code of 1986 (Code) impose a lien in favor of an underfunded single-employer plan that is covered by PBGC's termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons that are liable for required contributions (*i.e.,* a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons that fail to make payments to notify PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related instructions implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR 4043.81 (Subpart D of PBGC's regulation on Reportable Events and Other Notification Requirements, 29 CFR part 4043). PBGC currently requires filers to report the due date of the required payment that triggered the notification to PBGC and to calculate the cumulative amount of unpaid balances. PBGC is proposing to modify the form to include a separate field showing the payment amount that triggered the notification in order to better track missed contributions and identify the amount by which liens associated with missed contributions must be updated.

OMB has approved this collection of information under OMB control number 1212–0041, which expires February 28, 2022. PBGC intends to request that OMB extend its approval for three years, with modifications. 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.

PBGC estimates that it will receive 100 Form 200 filings per year and that the average annual burden of this collection of information is 100 hours and $72,500.

Method of Filing

PBGC's reportable events and certain other notification requirements regulation (29 CFR part 4043) provides that reportable event notices required under this part must be filed electronically in accordance with the instructions posted on PBGC's website. Those instructions currently provide two options for electronic filing:

- Using the 4043 module of PBGC's e-filing portal, or
- Emailing a completed form and any required attachments to *post-event.report@pbgc.gov*.

PBGC's e-filing portal, which has been available since 2016, offers a secure application for submitting Form 200 and Form 10 and 10-Advance information. The e-filing portal allows filers to review filings and generate a list of omissions and inconsistencies prior to submission to ensure completeness; save a partially completed filing; modify information any time prior to submission; pre-populate a filing with data from a previously submitted filing; route the filing as needed to facilitate e-certifications; and review prior filings submitted via the e-filing portal. PBGC is proposing to eliminate the email option for filings due after September 30, 2021. In other words, starting in October 2021, these filings would have to be submitted via PBGC's e-filing portal.

PBGC also intends to make other editorial changes to the forms and instructions in these collections.

PBGC is soliciting public comments to—

- solicit feedback on the anticipated impact of eliminating the email filing option;
- 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 collections of information, including the validity of the methodologies and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collections 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.

Issued in Washington, DC.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–24122 Filed 11–4–19; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–111; MC2020–17 and CP2020–16; MC2020–18 and CP2020–17]

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:* November 7, 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

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

[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).

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).:* CP2019–111; *Filing Title:* USPS Notice of Amendment to Parcel Select & Parcel Return Service Contract 9, Filed Under Seal; *Filing Acceptance Date:* October 29, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 7, 2019.

2. *Docket No(s).:* MC2020–17 and CP2020–16; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 102 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 29, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 7, 2019.

3. *Docket No(s).:* MC2020–18 and CP2020–17; *Filing Title:* USPS Request to Add Priority Mail Contract 557 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 29, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 7, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–24096 Filed 11–4–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2019–155; Order No. 5288]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service of its intention to change prices not of general applicability to reflect a range of prices to take effect on a date determined by the Postal Service Governors. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 6, 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

On October 29, 2019, the Postal Service filed a notice of specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters (E format) as well as a notice of price adjustment for certain Inbound Letter Post Small Packets and Bulky Letters pieces and associated Inbound Competitive International Registered Mail Service.[1] The Postal Service intends for the prices to take effect on July 1, 2020. Notice at 1. The Postal Service's Notice requests prompt review and approval of new prices for Inbound Letter Post Small Packets and Bulky Letters to facilitate its efforts to commence bilateral negotiations with foreign postal operators. *Id.* at 8.

II. Background

In Order No. 5152, the Commission approved a range of self-declared prices for Inbound Letter Post Small Packets and Bulky Letters from Universal Postal Union (UPU) group I, II, and III countries and from group IV countries with mail flows that exceed a certain annual tonnage threshold.[2] The Commission also approved the application of default terminal dues established in the Universal Postal Convention to mail flows from group IV countries that do not exceed the annual tonnage threshold. Order No. 5152 at 5, 18. When approving the range of self-declared rates, the Commission directed the Postal Service to provide notice of specific per-item and per-kilogram prices at least 15 days before the effective date of those prices. *Id.* at 19.

In September 2019, members of the UPU held a Third Extraordinary Congress and adopted proposals to reform the current terminal dues system for Inbound Letter Post small packets and bulky letters.[3] Specifically, the Third Extraordinary Congress adopted proposals that will allow the Postal Service to charge self-declared prices for Inbound Letter Post small packets and bulky letters beginning July 1, 2020. Notice at 4. The Postal Service must provide notice of these self-declared prices to the UPU International Bureau by March 1, 2020. *Id.*

III. Proposed Rates

The Postal Service's Notice includes an application for non-public treatment of materials filed under seal (Attachment 1), redacted specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters (Attachment 2), a redacted copy of Governors' Decision No. 19–5 (Attachment 3), and a certification pursuant to 39 CFR 3015.5(c)(2) (Attachment 4). *Id.* Attachments 1–4. In addition, the Postal Service filed the proposed rates and underlying workpapers under seal in this docket. *See* Notice at 3. The Postal Service states that the specific per-item and per-kilogram prices and supporting workpapers should remain confidential. *Id.* at 7. The Postal Service further explains its request for non-public treatment of the specific self-declared prices in its application for non-public treatment, filed pursuant to 39 CFR part 3007. *Id.* Attachment 1 at 1.

The Postal Service notes that the proposals adopted by the Third Extraordinary Congress necessitate a different price structure from what the Commission approved in Order No. 5152. *See* Notice at 5. Specifically, it plans to combine self-declared prices for Inbound Letter Post Small Packets and Bulky Letters with applicable rates for Inbound Letter Post letters and flats to ''formulate blended rates for low volumes flows,'' which will be applicable to group I countries with mail flows below 50 tonnes, and to group II and III countries with mail

[1] Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, October 29, 2019 (Notice).

[2] Order Approving Range of Rates for Inbound Letter Post Small Packets and Bulky Letters and Associated International Registered Mail Service, July 12, 2019, at 5, 18 (Order No. 5152). The Postal Service applied an annual tonnage threshold of 100 tonnes. *See* Responses of the United States Postal Service to Questions 1–10 of Chairman's Information Request No. 1, question 3.a, June 7, 2019.

[3] *See* Docket No. IM2019–1, Notice and Order Establishing Section 407 Proceeding, June 20, 2019, at 1 (Order No. 5127).

flows between 25 to 50 tonnes. *Id.* Furthermore, it plans to charge default terminal dues for certain low volume mail flows from group II, III, and IV countries. *Id.* at 6. Additionally, the default terminal dues for group IV countries are higher than those previously approved in Order No. 5152. *Id.* The Postal Service also notes that it adjusted the prices for associated Inbound Competitive International Registered Mail Service to conform more closely to the Universal Postal Convention and the Convention Regulations. *Id.* at 7.

The Postal Service states that the proposed specific per-item and per-kilogram prices for Inbound Letter Post Small Packets and Bulky Letters fall within the range approved by the Commission in Order No. 5152. *Id.* at 3. The Postal Service states that prices for the Inbound Letter Post Small Packets and Bulky Letters pieces and associated Inbound Competitive International Registered Mail Service would conform to the requirements for competitive products under 39 U.S.C. 3633. *Id.* at 3, 7. The Postal Service states that the proposed prices cover attributable costs, avoid cross-subsidization, and do not impede competitive products' collective ability to cover the appropriate share of institutional costs. *Id.* at 3, 7.

IV. Initial Administrative Actions

The Commission invites comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3015. Comments are due no later than November 6, 2019. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin continues to serve as Public Representative to represent the interests of the general public in this docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission invites interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3015.

2. Comments are due no later than November 6, 2019.

3. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin continues to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–24091 Filed 11–4–19; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87422; File No. SR–NYSECHX–2019–16]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule To Eliminate Market Data Revenue Rebates

October 30, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 28, 2019 the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') to eliminate Market Data Revenue Rebates. The Exchange proposes to implement the fee change effective November 1, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to eliminate Market Data Revenue (''MDR'') Rebates. The Exchange proposes to implement the fee changes effective November 1, 2019.

Background

The Exchange operates in a highly competitive environment. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation National Market System (''NMS''), the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for August 2019, no single exchange has more than 19% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first eight months of 2019, the Exchange averaged less than

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule).

[6] *See* Cboe U.S Equities Market Volume Summary at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmr exchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/.*

0.6% market share of executed volume of non-auction equity trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow.

Elimination of MDR Rebates

The Exchange proposes to amend its Fee Schedule to eliminate MDR Rebates by removing the text within Section P of the Fee Schedule in its entirety, replacing it with ''Reserved.''

The Current MDR Rebates Program

In response to the competitive environment in which the Exchange operates, in 2013, the Exchange established the MDR Rebates program to improve displayed liquidity and promote order flow to the Exchange by offering an incentive for market participants to quote on the Exchange.[10] The Exchange then enhanced the MDR Rebates program by including trade reports within the purview of the MDR Rebates program.[11]

The current MDR Rebates program provides that 50% of MDR received by the Exchange that exceeds an applicable threshold (''Excess MDR'') is shared with Participants.[12] MDR and Excess MDR is calculated separately each quarter for quotes and trade reports in each of Tapes A, B, and C securities, for a total of six MDR pools. The Exchange distributes to each Participant the Excess MDR in proportion to its respective Eligible Quote Activity[13] or Eligible Trade Activity[14] in a pool from the previous calendar quarter.[15]

Current Section P.2 of the Fee Schedule provides the following MDR thresholds for Tape B securities:

- For quotes, the threshold is $204,000.
- For trade reports, the threshold is $36,000.

The dollar value represents the amount of MDR that the Exchange keeps (*i.e.,* not eligible for sharing). Any MDR in excess of the thresholds is Excess MDR.

For Tape A and Tape C securities, there is no threshold for quotes. Therefore, all MDR received in those quote pools is considered Excess MDR, and 50% of all MDR received in Tape A and Tape C securities is eligible for sharing with Participants pursuant to the MDR Rebates program.

For Tape A and Tape C securities, the threshold value for trade reports is equal to the MDR received by the Exchange that can be attributed to trade reports resulting from cross orders, as defined under Article 1, Rule 2(a)(2).[16]

In 2017, the Exchange paid a total of $907,035 under the MDR Rebates program to 13 Participants. In 2018, the Exchange paid a total of $1,243,774 under the MDR Rebates program to 10 Participants.

Application of Proposed Change

The MDR Rebates program has not achieved its intended objective, which was to encourage Participants to increase their quoting and trading activity on the Exchange, as significantly as the Exchange had anticipated. Since the program (in its current form) began, the Exchange's market share has remained largely unchanged. In the third quarter of 2014, the Exchange's market share in cash equities trading, excluding auctions, was 0.56%[17] and in the fourth quarter of 2014, after the current version of the program was implemented, it declined to 0.44%.[18] In the first six months of 2019, the Exchange's market share, excluding auctions, remained below 0.6%.[19] Because the program has not achieved the intended growth in trading on the Exchange, the Exchange proposes to eliminate the program in its entirety.

Based on 2018 payments under the program, only 10 Participants will be impacted by this proposed change.[20] Although the Exchange is proposing to eliminate the MDR Rebates program mid-quarter, the Exchange will distribute MDR Rebates to Participants for the month of October 2019 unless the total MDR Rebate attributed to a Participant is less than $500.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[22] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[23]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[24] Indeed, equity trading is currently dispersed across 13

[9] Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019 and August 2019 was 0.52%, 0.52%, 0.56%, 0.50%, 0.50%, 0.48%, 0.46% and 0.43%, respectively.

[10] *See* Securities Exchange Act Release No. 70546 (September 27, 2013), 78 FR 61413 (October 3, 2013) (SR–CHX–2013–18) (notice of filing and immediate effectiveness of proposed rule change to adopt a Market Data Revenue Rebates program).

[11] *See* Securities Exchange Act Release No. 72759 (August 5, 2014), 79 FR 46890 (August 11, 2014) (SR–CHX–2014–11) (notice of filing and immediate effectiveness of proposed rule change to amend Section P of the Fee Schedule concerning the Market Data Revenue Rebates program); *see also* Securities Exchange Act Release No. 71210 (December 31, 2013), 79 FR 869 (January 7, 2014) (SR–CHX–2013–24) (notice of filing and immediate effectiveness of proposed rule change to amend the Market Data Revenue Rebates program).

[12] A ''Participant'' is, except as otherwise described in the Rules of the Exchange, ''any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively.'' Article 1, Rule 1(s).

[13] Section P.1 of the Fee Schedule defines ''Eligible Quote Activity'' as ''a Participant's quoting of displayed orders in Tapes A, B and C securities.''

[14] Section P.1 of the Fee Schedule defines ''Eligible Trade Activity'' as ''trades resulting from single-sided resting orders submitted by the Participant in Tapes A, B and C securities.''

[15] The Exchange does not distribute MDR Rebates to a Participant if the total MDR Rebate attributed to the Participant is less than $500.

[16] A cross order is an order to buy and sell the same security at a specific price, and may only execute on the Exchange if it is priced better than the Working Price of all resting orders on the book.

[17] *See* note 8, *supra.*

[18] *Id.*

[19] *See* note 9, *supra.*

[20] As of December 31, 2018, there were 77 Participants on the Exchange that could have qualified for the program.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and (5).

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

exchanges,[25] 31 alternative trading systems,[26] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).[27] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first eight months of 2019, the Exchange averaged less than 0.6% market share of executed volume of equity trades (excluding auction volume).[28]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, Participants can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed change to eliminate the credits associated with the MDR Rebates program is reasonable because the MDR Rebates program has not served to incentivize Participants to increase quoting and trading to the level anticipated by the Exchange. The Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. As noted above, the Exchange's market share since 2017 has not changed in any meaningful way.

The Exchange further believes it is reasonable to eliminate the market data revenue sharing because the program has not had a meaningful impact.

The Proposed Rule Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants.

The Exchange is proposing to eliminate the MDR Rebates program because it has not served to incentivize quoting and trading activity for which the program was designed. The Exchange expects to continue to explore additional opportunities to provide an incentive for order flow on the Exchange.

The Exchange believes the proposed rule change eliminating the MDR Rebates program is equitable as it is intended to remove a program that does not serve as an incentive to attract more liquidity to the Exchange. The proposal does not target any one particular category of market participant. However, the proposal will impact one participant more significantly as that participant received a large majority of the MDR Rebates under the program. As to those market participants that do not presently qualify for the revenue sharing, the proposal will not impact their existing pricing for transactions or their ability to qualify for other fees or credits provided by the Exchange.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed elimination of the MDR Rebates program is not unfairly discriminatory because it would apply to all Participants on an equal and non-discriminatory basis. The proposal to eliminate the MDR Rebates neither targets or will it have a disparate impact on any particular category of market participant. As noted above, in 2017, the Exchange paid a total of $907,035 under the MDR Rebates program to 13 Participants, and in 2018, the Exchange paid a total of $1,243,774 under the MDR Rebates program to 10 Participants. These Participants comprised firms that trade on both a principal and an agency basis and represent more than 75% of the total liquidity providing shares executed on the Exchange. Most of these Participants are also members of other exchanges and likely directed their order flow primarily to those other market centers and not to the Exchange.

The Exchange believes that the proposed rule change is not unfairly discriminatory because all similarly situated Participants would be equally impacted by the elimination of the MDR Rebates program.

* * * * *

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[29] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed elimination of the MDR Rebates program will impair the ability of Participants to compete in the financial markets. There are 13 exchanges, 31 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow from which Participants may choose to send their quotes and trades. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Participants equally that transact on the Exchange, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition

The Exchange does not believe that eliminating the MDR Rebates program would impact intermarket competition because the program has not achieved its intended objective of attracting liquidity to the Exchange and therefore, eliminating the program would not have a material impact to the Exchange's standing with respect to its competitors, none of whom provide a similar rebate. The Exchange notes that in the first eight months of 2019, the Exchange averaged less than 0.6% market share of executed volume of non-auction equity trading.[30] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe the proposed change can impose any burden on competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee and rebate levels at those other venues to be

[25] *See* Cboe U.S. Equities Market Volume Summary at *https://markets.cboe.com/us/equities/market_share.*

[26] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[27] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[28] *See* note 9, *supra.*

[29] 15 U.S.C. 78f(b)(8).

[30] *See* note 9, *supra.*

more favorable. Further, inefficient pricing, including rebates that do not incentivize increased trading and quoting activity, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [31] of the Act and subparagraph (f)(2) of Rule 19b–4 [32] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [33] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2019–16 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–NYSECHX–2019–16. 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–NYSECHX–2019–16 and should be submitted on or before November 26, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24089 Filed 11–4–19; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(2).

[33] 15 U.S.C. 78s(b)(2)(B).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87423; File No. SR–MSRB–2019–12]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Revisions to the Content Outline for the Municipal Advisor Principal Qualification Examination and Its Associated Selection Specifications for the Examination

October 30, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2019 the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission revisions to the content outline for the Municipal Advisor Principal Qualification Examination (''Series 54 examination'') and its associated selection specifications for the examination (''selection specifications'') (collectively, the ''proposed rule change''). The proposed revisions to the content outline include incorporating MSRB Rule G–40, on advertising by municipal advisors, and a description of the functions and knowledge required to perform the supervisory tasks related to Rule G–40; specifying that the passing score for the examination is 70%; updating the sample questions; and making other technical changes to clarify topic descriptions. The MSRB is not proposing in this filing any textual changes to its rules.

The proposed rule change has been filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(1) thereunder.[4] The MSRB proposes to make available the permanent Series 54 examination beginning November 12, 2019.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx,* at the MSRB's principal office, 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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1). *See also* letter to Diane G. Klinke, General Counsel, MSRB, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000, attached [sic] as Exhibit 3b.

rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe ''standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons'' [5] and requires persons in any such class to pass tests prescribed by the Board.[6] Section 15B(b)(2)(L)(iii) of the Act further requires the MSRB to establish professional standards for municipal advisors.[7] A professional qualification examination is intended to determine whether an individual meets the MSRB's required qualification standards. The MSRB believes that professional qualification examinations, such as the Municipal Advisor Representative Qualification Examination (''Series 50 examination'') and the Series 54 examination are means for determining the competency of individuals in particular qualification classifications. More specifically, the Series 54 examination is designed to measure a candidate's knowledge of the application of federal securities laws, including MSRB rules to the municipal advisory activities of a municipal advisor and that of its associated persons.

On September 19, 2018, the MSRB filed with the SEC amendments to Rule G–3, on professional qualification requirements, for immediate effectiveness, to require municipal advisor principals to become appropriately qualified by passing the Series 54 examination.[8] Thereafter, on December 20, 2018, the MSRB filed the Series 54 examination content outline with the SEC for immediate effectiveness.[9] The Series 54 examination content outline was developed to serve as a guide to the subject matter tested on the Series 54 examination and prescribes the specified knowledge required in each functional area that is specific to the role and responsibilities of a municipal advisor principal (''principal-level activity'').[10] The MSRB has noted that the establishment of qualification requirements for municipal advisor principals and the subject matter covered on the examination to be tested on would assist in ensuring that municipal advisor principals have a baseline knowledge of the municipal market, municipal advisory activities, as well as the regulatory requirements.

Current Content Outline

The Series 54 examination content outline describes the knowledge and tasks required in carrying out principal-level activity related to the three topical sections comprising the examination:

(1) Understanding the Municipal Advisor Regulatory Framework (25 questions);

(2) Supervising Municipal Advisory Activities (35 questions); and

(3) Supervising Municipal Advisor Firm Operations (40 questions).

As the MSRB has previously noted, while the subject matters represented on the Series 54 examination content outline may have redundancies with subject matters appearing on the Series 50 examination content outline, the Series 54 examination is designed to test the specific application of MSRB rules and other federal securities laws to the municipal advisory activities of the municipal advisor, whereas the Series 50 examination is meant to test the baseline competency of individuals engaged in municipal advisory activities and is not designed to specifically or extensively test the application of those laws.[11] Additionally, to familiarize candidates with the format of the Series 54 examination, the content outline includes sample questions that are similar to the type of questions that may be found on the Series 54 examination.

The Series 54 examination will consist of 100 multiple-choice questions drawn from a collection of test questions available for the Series 54 examination with each multiple-choice question being worth one point. Individuals will receive an additional 10 questions that are randomly distributed throughout the Series 54 examination and do not count for scoring purposes; these questions serve to pretest questions to be used in future administration of the Series 54 examination. Individuals will be allowed 180 minutes to complete the Series 54 examination.[12]

Proposed Revisions

As a result of the recent implementation of Rule G–40, on advertising by municipal advisors, which became effective on August 23, 2019, the proposed rule change adds a description of the functions and knowledge required to perform the supervisory tasks related to Rule G–40. Additionally, the proposed rule change includes information about the passing score, updates the sample questions and makes other technical changes to the content outline to clarify topic descriptions. A summary of the proposed rule change, detailed by major topic headings, is provided below:

Administration of the Exam

- On pg. 3: The passing score of 70% is added to the ''Administration of the Examination'' section of the outline.

Part 1: Understanding the Municipal Advisor Regulatory Framework

- For Subtopic A., under the ''Knowledge Required'' section, the description is being revised to read ''Regulation of Municipal Securities;''
- For Subtopic A.2.d., under the ''Knowledge Required'' section, the description is being revised to remove the word ''understanding;''
- For Subtopic A.2.e., under the ''Knowledge Required'' section, the description is being revised to remove the word ''understand;''
- For Subtopic A.3., under the ''Knowledge Required'' section, the description is being revised to add the phrase ''SEC Statutory Fiduciary Duty Standard'' and the word ''and;''
- For Subtopic B., under the ''Knowledge Required'' section, the description is being revised to change ''Regulators'' to ''Regulatory;''
- For Subtopic B.1., under the ''Knowledge Required'' section, the description is being revised to remove the phrase ''understanding the;''

Part 2: Supervising Municipal Advisory Activities

- Under the ''Tasks'' section, for words not taking the gerund form of a verb, revising as such:
  - Changing ''Determination'' to ''Determining;'' ''Review'' to

[5] 15 U.S.C. 78*o*–4(b)(2)(A).

[6] 15 U.S.C. 78*o*–4(b)(2)(A)(iii).

[7] 15 U.S.C. 78*o*–4(b)(2)(L)(iii).

[8] *See* Exchange Act Release No. 84630 (November 20, 2018), 83 FR 60927 (November 27, 2018) (File No. SR–MSRB–2018–07).

[9] *See* Exchange Act Release No. 84926 (December 21, 2018), 83 FR 67772 (December 31, 2018) (File No. SR–MSRB–2018–10).

[10] Under Rule G–3(e) a ''municipal advisor principal'' is defined as ''a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.''

[11] *See supra* note 9.

[12] Prior to beginning the examination, individuals will be provided with a brief tutorial on the administration of the computerized exam. Candidates will be given 30 minutes to complete the tutorial in addition to the 180 minutes allowed to complete the Series 54 examination.

''Reviewing;'' ''Documentation of'' to ''Documenting;'' ''Assess'' to ''Assessing;'' ''Determination'' to ''Determining;'' and ''Maintain'' to ''Maintaining;''

- For Subtopic A.8., under the ''Knowledge Required'' section, the description is being revised to read ''Disclosure of Conflicts of Interest and Other Information;'' the rule reference MSRB Rule G–42(b) is being added; the rule reference MSRB Rule G–44 is being deleted; and the description ''Other duties of municipal advisors'' is renumbered as A.10;
- For Subtopic A.9., under the ''Knowledge Required'' section, the description is being revised to ''Provision on the process to cure inadvertent advice;''

Part 3: Supervising Municipal Advisor Firm Operations

- Under the ''Tasks'' section, for words not taking the gerund form of a verb, revising as such:
  - Changing ''Education'' to ''Educating;'' ''Submit'' to ''Submitting;'' ''Ensure'' to ''Ensuring;'' ''Maintain'' to ''Maintaining;'' Implement'' to ''Implementing;'' ''Oversee'' to ''Overseeing;'' ''Monitor'' to ''Monitoring;'' ''Review'' to ''Reviewing;'' and ''Ensure'' to ''Ensuring;''
- Under the ''Tasks'' section, for bullet 2 change the *e.g.* to ''continuing education;''
- Under the ''Tasks'' section, for bullet 4 add the word ''Fulfilling;''
- Under the ''Tasks'' section, adding the description ''Surveilling for political contributions that may trigger a ban on municipal advisory business and required filings'' to the list of tasks;
- For Subtopic A.4., under the ''Knowledge Required'' section, the description is being revised to add the word ''SEC'' before ''Form MA;''
- For Subtopic A.6., under the ''Knowledge Required'' section, the description is being revised to ''Notification regarding the municipal advisory client brochure;''
- For Subtopic A.7., under the ''Knowledge Required'' section, the description is being revised to ''Gifts, gratuities and normal business dealings compliance obligations;''
- For Subtopic A.8., under the ''Knowledge Required'' section, the description is being revised to ''Activities triggering a ban on municipal advisory business, exemptions and required filings; the rule reference is being updated to MSRB Rule G–37(b)(i)(A)–(D) and (e);
- Under the ''Knowledge Required'' section, adding as subtopic A.10., the description ''Advertising and content standards; and the rule reference MSRB Rule G–40;
- For Subtopic B.1., under the ''Knowledge Required'' section, the description is being revised to add the word ''SEC'' before ''Form MA–I;''

Sample Questions

Sample questions 1–5 are being replaced and updated with the sample questions initially published in the *Understanding the Municipal Advisor Principal Qualification Examination* compliance resource.

As noted above, the MSRB has designated the proposed rule change for immediate effectiveness. The selection specifications for the Series 54 examination, which the MSRB has submitted under separate cover with a request for confidential treatment to the Commission, pursuant to Rule 24b–2 under the Act,[13] describe additional confidential information regarding the Series 54 examination.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,[14] which authorizes the MSRB to prescribe ''standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons'' and Sections 15B(b)(2)(A)(i)[15] and 15B(b)(2)(A)(iii)[16] of the Act, which provides that the Board may appropriately classify associated persons of municipal advisors and require such persons in any such class to pass tests prescribed by the Board. The MSRB also believes that the proposed rule change is in furtherance of Section 15B(b)(2)(L)(iii) of the Act, which requires the MSRB to establish professional standards for municipal advisors.[17]

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Act in that the revisions will ensure that certain key concepts and rules are tested on the Series 54 examination in furtherance of the MSRB's mandate that individuals' demonstrate the specified level of competence that would be appropriate and in the furtherance of the public interest. Also, consistent with the purpose of Sections 15B(b)(2)(A) and 15B(b)(2)(L)(iii) of the Act, updating topic descriptions to ensure individuals have an enhanced understanding of the subject matters covered on the examination will aid individuals in their preparation for the examination and facilitates standards of competence being attained to carry out a municipal advisor principal's role of supervision of the municipal advisory activities and operational functions of the municipal advisor and that of its associated persons, which is in furtherance of the public interest. More generally, the MSRB's professional qualification examinations are designed to measure knowledge of the business activities and regulatory requirements under federal securities laws, including MSRB rules, applicable to a particular qualification classification, which is also in furtherance of the Act.

The MSRB also believes the proposed rule change is in accordance with Section 15B(b)(2)(C) of the Act,[18] which requires, among other things, that MSRB rules ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . and, in general, to protect investors, municipal entities, obligated persons, and the public interest . . .'' The MSRB notes the proposed rule change is consistent with this provision of the Act, to foster the prevention of fraudulent practices, because by ensuring individuals have a guide to the subject matters covered in the requisite professional examinations and demonstrating competence in the application of federal securities laws and MSRB rules to a firm's municipal advisory activities, such individuals are likely better equipped to exercise proper supervisory control over the activities of municipal advisor representatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act[19] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act. In addition, Section 15B(b)(2)(L)(iv) of the Act[20] provides that MSRB rules may ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.'' The MSRB does not believe that the

[13] 17 CFR 240.24b–2.

[14] 15 U.S.C. 78*o*–4(b)(2)(A).

[15] 15 U.S.C. 78*o*–4(b)(2)(A)(i).

[16] 15 U.S.C. 78*o*–4(b)(2)(A)(iii).

[17] 15 U.S.C. 78*o*–4(b)(2)(L)(iii).

[18] 15 U.S.C. 78*o*–4(b)(2)(C).

[19] 15 U.S.C. 78*o*–4(b)(2)(C).

[20] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of these provisions and their purposes under the Act, relative to the economic baseline, which includes the requirement that municipal advisor professionals demonstrate, by passing an examination, that they meet professional standards deemed necessary or appropriate in the public interest or for the protection of investors, municipal entities and obligated persons.

Moreover, the MSRB has no reason to believe that revisions to the Series 54 examination content outline will pose any greater burden on individuals associated with smaller municipal advisors than those associated with larger municipal advisors or that the burden could be materially reduced while still achieving the purposes of the Act of protection of investors against fraud. Lastly, the proposed rule change is more explanatory in nature to ensure individuals have an enhanced understanding of the functions and associated tasks covered on the Series 54 examination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 thereunder.[22] 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.

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–MSRB–2019–12 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–MSRB–2019–12. 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 MSRB. 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–MSRB–2019–12 and should be submitted on or before November 26, 2019.

For the Commission, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24090 Filed 11–4–19; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87421; File No. SR–CboeBZX–2019–068]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the iShares California Short Maturity Muni Bond ETF of the iShares U.S. ETF Trust Under Rule 14.11(i), Managed Fund Shares

October 30, 2019.

I. Introduction

On July 19, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Cboe BZX Rule 14.11(c) to list and trade shares (''Shares'') of the iShares California Short Maturity Muni Bond ETF (''Fund'') of the iShares U.S. ETF Trust under BZX Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on August 7, 2019.[3] On September 19, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On October 1, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced in its entirety the proposed rule change as originally submitted.[6] The Commission has received no comments on the proposal. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86546 (Aug. 1, 2019), 84 FR 38689.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87018, 84 FR 50501 (Sep. 25, 2019). The Commission designated November 5, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2019-068/srcboebzx2019068-6362715-196411.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

II. Summary of the Proposed Rule Change, as Modified by Amendment No. 1[8]

BZX Rule 14.11(i) permits the Exchange to generically list Managed Fund Shares[9] issued by a fund whose portfolio components satisfy certain criteria. The Exchange must file separate proposals under Section 19(b) of the Act to list and trade shares of a series of Managed Fund Shares with portfolio components that do not satisfy the applicable generic listing criteria (including portfolio components not specified in the generic listing standards).[10]

According to the Exchange, the Fund will satisfy all of the applicable generic listing requirements except for BZX Rule 14.11(i)(4)(C)(ii)(a),[11] which requires that fixed income securities in a fund's portfolio that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum principal amount outstanding of $100 million or more. Accordingly, the Exchange filed the pending proposal to seek Commission approval to list and trade the Shares.

BlackRock Fund Advisors (''Adviser'') is the investment adviser to the Fund.[12] The Fund will seek to maximize tax-free current income from a portfolio composed of short maturity, investment-grade municipal bonds issued in the State of California. To achieve its objective, the Fund will invest, under Normal Market Conditions,[13] at least 80% of its net assets in U.S.-dollar denominated investment-grade short-term fixed- and floating-rate Municipal Securities, as defined below, with remaining maturities of five years or less, issued in the State of California by or on behalf of California state or local governments or agencies, whose interest payments are exempt from U.S. federal, including the federal alternative minimum tax, and California state income taxes. Under Normal Market Conditions, the Fund will seek to maintain a weighted average maturity that is less than three years.[14]

Municipal Securities include only the following instruments: General obligation bonds; limited obligation bonds (or revenue bonds); municipal notes; municipal commercial paper; tender option bonds; variable rate demand notes and demand obligations; municipal lease obligations, stripped securities; structured securities;[15] zero coupon securities; and shares of exchange-traded and non-exchange-traded investment companies that principally invest in such Municipal Securities.

Other Portfolio Holdings. The Fund may also, to a limited extent (under Normal Market Conditions, less than 20% of the Fund's net assets), invest in certain futures, options and swap contracts;[16] cash and cash equivalents; as well as in Municipal Securities of issuers located outside of California whose interest payments are exempt from regular federal income taxes.[17] The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). The Fund may also invest in short-term instruments (''Short-Term Instruments''),[18] which includes exchange traded and non-exchange traded investment companies that invest in money market instruments.

Investment Restrictions. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.[19]

Additionally, the Exchange states that the Fund will launch with at least 300,000 Shares outstanding. The Exchange also states: (1) The portfolio will hold a minimum of 15 different Municipal Securities from at least 15 unique issuers when at least six creation units are outstanding, but will never hold fewer than 10 different Municipal

[8] For a full description of the proposal, *see* Amendment No. 1, *supra* note 6.

[9] ''Managed Fund Shares'' is defined in BZX Rule 14.11(i)(3)(A).

[10] *See* BZX Rule 14.11(i)(4)(C).

[11] *See* Amendment No. 1, *supra* note 6, 84 FR at 14.

[12] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

[13] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In the absence of Normal Market Conditions, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic or political conditions. *See id.* at 7, n.8.

[14] Weighted average maturity is a U.S. dollar-weighted average of the remaining term to maturity of the underlying securities in the Fund's portfolio. For the purposes of determining the Fund's weighted average maturity, a security's final maturity date will be used for calculation purposes.

[15] Structured securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets. *See id.* at 9, n.20

[16] Such futures, options and swap contracts will include only the following: Interest rate futures, interest rate options, and interest rate swaps. The derivatives will be centrally cleared and they will be collateralized. At least 90% of the Fund's net assets that are invested in listed derivatives will be invested in instruments that trade in markets that are members or affiliates of members of the Intermarket Surveillance Group or are parties to a comprehensive surveillance sharing with the Exchange. *See id.* at 10, n.24.

[17] Issuers located outside of California may be states, territories and possessions of the U.S., including the District of Columbia, and their political subdivisions, agencies and instrumentalities.

[18] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds; (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[19] Illiquid assets are defined by Rule 22e–4. In reaching liquidity decisions, the Adviser may consider factors including: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets). *See id.* at 12–13.

Securities from at least 10 unique issuers; (2) no single obligor will account for more than 10% of the weight of the Fund's portfolio and no 10 obligors will account for more than 75% of the weight of the Fund's portfolio.[20] Additionally, no more than 50% of the Fund's assets will be invested in issuers that are more than 5% of the value of the Fund's assets, and the Fund will not invest more than 25% of its assets in any single issuer.[21]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2019–068 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [22] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[23] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal'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.'' [24] Specifically, the Commission seeks comment regarding the following:

1. Would the proposed requirement that the portfolio hold a minimum of ten different Municipal Securities from at least ten unique issuers or, when at least six creation units are outstanding, fifteen different Municipal Securities from at least fifteen unique issuers be sufficient to ensure that the Fund's portfolio isn't susceptible to manipulation?

2. Would the proposed concentration limit, *i.e.,* that no single obligor will account for more than 10% of the weight of the Fund's portfolio and no ten obligors will account for more than 75% of the weight of the Fund's portfolio, be sufficient to ensure that the Fund's portfolio isn't susceptible to manipulation?

3. Taken collectively, would the proposed listing requirements adequately ensure that the Fund's portfolio would not be susceptible to manipulation?

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[25] any request for an opportunity to make an oral presentation.[26]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by November 26, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 10, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[27] in addition to any other comments they may wish to submit about the proposal.

In this regard, the Commission seeks comment on the Exchange's proposed generic listing standards for Shares based on an index or portfolio of Municipal Securities. The Commission specifically seeks comment on whether the proposed requirement that an underlying index or portfolio must include a minimum of 500 component Municipal Securities is consistent with the requirement that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [28]

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–068. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–068 and should be submitted by November 26, 2019. Rebuttal comments should be submitted by December 10, 2019.

[20] *See id.* at 13.

[21] *See id.* at 13–14.

[22] 15 U.S.C. 78s(b)(2)(B).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

[25] 17 CFR 240.19b-4.

[26] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[27] *See supra* note 6.

[28] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24088 Filed 11–4–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0230]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from six individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with implantable cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 5, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA–2019–0230 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0230.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0230), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go *http://www.regulations.gov/docket?D=FMCSA-2019-0230.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0230* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The six individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical

[29] 17 CFR 200.30–3(a)(57).

[1] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

John Gittenmeier

Mr. Gittenmeier is a commercial motor vehicle driver in Missouri. An August 2019, letter from Mr. Gittenmeier's cardiologist reports that his ICD was implanted in May of 2018, and that he denies any symptoms of palpitations, rapid heartbeat, shortness of breath, chest pains, syncope, or edema. His cardiologist reports that his most recent ejection fraction in 2018, was 40 percent.

Charles Huff

Mr. Huff is a commercial motor vehicle driver in Ohio. A July 2019, letter from his cardiologist reports that his ICD was implanted in 2012. Mr. Huff's cardiologist reports that he has episodes of non-sustained ventricular arrhythmia but has no countershock, that he had ATPs, (antitachycardia pacing) and that his ejection fraction is around 40 percent. Mr. Huff has an ''Intrastate Only'' Ohio Public Utilities Medical Examiner's Provisional Certificate that expires December 8, 2019. Mr. Huff seeks to operate a CMV in interstate commerce into the States of Indiana, Pennsylvania, and Michigan, for a distance of no more than 50 miles for a two-year period for each of the three States.

Brian Hullopeter

Mr. Hullopeter is a commercial motor vehicle driver in Minnesota. A July 2019, letter from his cardiologists reports that Mr. Hullopeter's ICD device was implanted in May of 2017, and has not deployed. His last echocardiogram showed normal left ventricular size and function.

Gaetano Letizia

Mr. Letizia is commercial driver in New Jersey. Letters dated July 2019, from his cardiologists report that Mr. Gaetano's CRT–ICD was implanted in September 2017, and over the past year he has not received any shocks or therapies from the defibrillator. His most recent June 2019, ejection fraction was measured between 35 and 40 percent. His cardiologist's letter reports that he is stable from a cardiac standpoint.

Corey Tugwell

Mr. Tugwell is a Class A CDL holder in Oklahoma. A September 2019, letter from Mr. Tugwell's cardiologist reports that his initial ICD implantation was in July of 2011. His cardiologist reports that Mr. Tugwell has not had syncope for many years, and he has never demonstrated any life-threatening arrhythmias or received appropriate ICD shocks since initial implantation, that he has an ejection fraction of 50–55 percent, and his cardiomyopathy has resolved and his current risk of life-threatening arrhythmias or ICD shocks appears to be very low.

Thomas Daniel Worsley

Mr. Worsley is a commercial motor vehicle driver in Virginia. A July 2019, letter from Mr. Worsley's cardiologist reports that his biventricular pacemaker/ICD was implanted in October 2018, his ejection fraction is 52 percent, he is asymptomatic and physically very active. Mr. Worsley's cardiologist reports that he is at extremely low risk for any sudden cardiac death as he now has a normal ejection fraction and an implantable defibrillator which he states that by recent studies has been shown to work 99 percent of the time.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: October 30, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–24101 Filed 11–4–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019–0020]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before December 5, 2019.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 7, 2019, FTA published a 60-day notice (84 FR 38722) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires

OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. Section 5337 State of Good Repair Program.

OMB Control Number: 2132–0577.

Type of Request: Renewal of a previously approved information collection.

Abstract: The State of Good Repair (SGR) Grants Program (49 U.S.C. 5337) provides financial assistance to public transit agencies that operate rail fixed-guideway and high-intensity motorbus systems for the maintenance, replacement, and rehabilitation of capital assets, along with the development and implementation of transit asset management plans. These funds reflect a commitment to ensuring that public transit operates safely, efficiently, reliably, and sustainably so that communities can offer balanced transportation choices that help to improve mobility, reduce congestion, and encourage economic development. Eligible recipients include state and local government authorities in urbanized areas with intensity fixed guideway systems and/or intensity motorbus systems operating at least seven years. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute.

Respondents: Eligible recipients are state and local government authorities in urbanized areas with fixed guideway and high intensity motorbus systems in revenue service for at least seven years.

Estimated Annual Number of Respondents: 1,044.

Estimated Total Annual Burden: 13,217.

Frequency: Annually.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019–24155 Filed 11–4–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.''

DATES: Comments must be submitted on or before January 6, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0248, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0248'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov*. Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0248'' or ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to publish a 60-day notice in

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice of the renewal of the following information collection:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control No.: 1557–0248.

Type of Review: Regular.

Affected Public: Businesses or individuals.

Frequency of Response: On occasion.

Burden Estimate:

Number of Respondents: 7,025.

Total Annual Burden: 2,850.

Description: This generic information collection request (ICR) provides a means to solicit qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. Qualitative feedback is information that provides useful insights on perceptions and opinions but does not include statistical survey or quantitative results that can be attributed to the surveyed population. This qualitative feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; and/or focuses attention on areas where communication, training, or changes in operations might improve delivery of products or services. It also enables ongoing, collaborative, and actionable communications between the OCC and its customers and stakeholders, while also utilizing feedback to improve program management.

The OCC's solicitations for feedback target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues related to service delivery. The OCC uses the responses to inform and plan efforts to improve or maintain the quality of service offered to the public. If the OCC does not collect this information, it will not have access to vital feedback from customers and stakeholders.

Under this generic ICR, the OCC will submit a specific information collection for approval only if the collection meets the following conditions:

- It is voluntary;
- It imposes a low burden on respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and a low cost on both respondents and the Federal government;
- It is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or will have experience with the program in the near future;
- It includes personally identifiable information (PII) only to the extent necessary, and the OCC does not retain the PII; [2]
- It gathers information intended to be used internally only for general service improvement and program management purposes and not intended for release outside of the OCC;
- It does not gather information to be used for the purpose of substantially informing influential policy decisions;
- It gathers information that will yield qualitative information and will not be designed or expected to yield statistically reliable results or used to reach general conclusions about the surveyed population; and
- Feedback collected provides useful information, but it does not yield data that can be attributed to the overall population.

If these conditions are not met, the OCC will submit an information collection request to OMB for approval through the normal PRA process.

The OCC will not use this type of generic clearance for the collection of qualitative feedback for any quantitative information collection.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

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

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and/or purchase of services expended to provide information.

Dated: October 30, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–24076 Filed 11–4–19; 8:45 am]

BILLING CODE 4810–33–P

[2] The OCC may retain PII only in limited circumstances and, if it does so, the OCC must comply with applicable requirements, restrictions, and prohibitions of the Privacy Act of 1974 and other privacy and confidentiality laws that govern the collection, retention, use, and/or disclosure of such PII.

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs (VA) Health Care Personnel Act of 1991 revised the disciplinary grievance and appeal procedures for employees appointed under federal law. It also required the periodic designation of VA employees who are qualified to serve on the Disciplinary Appeals Board. These employees constitute the Disciplinary Appeals Board Panel from which board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, upon request and without charge, the list of the employees on the panel, and may submit comments concerning the suitability of any employee on the panel list.

DATES: The names that appear on the panel roster may be selected to serve on a Disciplinary Appeals Board or as a grievance examiner after December 5, 2019.

ADDRESSES: Requests for the panel roster and written comments may be directed to: Secretary of Veterans Affairs, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Requests and comments may also be faxed to (202) 495–5200. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hayek, Senior Employee Relations Policy Specialist, Employee Relations and Performance Management Service, Office of Human Resources Management, Department of Veterans

Affairs, 810 Vermont Avenue NW, Mailstop 051, Washington, DC 20420. Ms. Hayek may be reached at (440) 525–5493. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Public Law 102–40 and 38 United States Code (U.S.C.) 7464(d) requires that the availability of the roster be posted in the **Federal Register** periodically, but not less than annually.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on October 28, 2019, for publication.

Dated: October 30, 2019.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–24038 Filed 11–4–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 214 November 5, 2019

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 557

Eligibility of the People's Republic of China, Socialist Republic of Vietnam, and Thailand To Export Siluriformes Fish and Fish Products to the United States; Final Rules

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 557

[Docket No. FSIS–2018–0030]

RIN 0583–AD73

Eligibility of the People's Republic of China To Export Siluriformes Fish and Fish Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Siluriformes fish inspection regulations to list the People's Republic of China (PRC) as a country eligible to export Siluriformes fish and fish products to the United States. FSIS has reviewed the PRC's laws, regulations, and inspection system as implemented and has determined that the PRC's Siluriformes fish inspection system is equivalent to the system that the United States has established under the Federal Meat Inspection Act (FMIA) and its implementing regulations. Under this final rule, only raw Siluriformes fish and fish products produced in certified PRC establishments are eligible for export to the United States. All such products are subject to re-inspection at U.S. points-of-entry by FSIS inspectors.

DATES: *Effective Date:* December 5, 2019.

FOR FURTHER INFORMATION CONTACT: Terri Nintemann, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2018, FSIS proposed to amend its regulations at 9 CFR 557.2(b)(1) to add the PRC as a country eligible to export Siluriformes fish to the United States (83 FR 47524) (for convenience, in this final rule, ''Siluriformes fish and fish products'' will be shortened to ''Siluriformes fish''). Although the PRC has been allowed to export these products to the United States under the conditions described in the proposed rule (83 FR 47524), the PRC is not currently listed in the Code of Federal Regulations (CFR) as eligible to export Siluriformes fish to the United States. FSIS proposed to add the PRC to the regulations as eligible to export such products after the Agency conducted a documentary review of the PRC's laws, regulations, and Siluriformes fish inspection system, as well as an in-country audit of the system, and determined that the PRC's Siluriformes fish inspection system is equivalent to the U.S. system established under the FMIA and its implementing regulations. This final rule is consistent with the provisions of the proposed rule.

Statutory and Regulatory Basis for Final Action

As explained in the proposed rule (83 FR 47524), Siluriformes fish are an amenable species under the FMIA (21 U.S.C. 601(w)(2)). The FMIA prohibits importation into the United States of adulterated or misbranded meat and meat food products (21 U.S.C. 620). Under the FMIA and its implementing regulations, Siluriformes fish imported into the United States must be from foreign countries that maintain an inspection system that ensures compliance with requirements equivalent to the inspection, sanitary, quality, species verification, and residue standards in the United States, and all other provisions of the FMIA that are applied to official establishments in the United States. The regulatory requirements for foreign countries to become eligible to export Siluriformes fish to the United States are provided in 9 CFR 557.2, which cross-references 9 CFR 327.2, the regulations for the import of other products also subject to the FMIA.

Section 557.2(a) (cross-referencing 9 CFR 327.2(a)(1), (a)(2)(i), (a)(2)(ii)(C)–(I), (a)(2)(iii)–(iv), and (a)(3)), requires a foreign country's inspection system be authorized by legal authority that imposes requirements equivalent to those of the United States, specifically with respect to: (1) Official controls by the national government over establishment construction, facilities, and equipment; (2) direct official supervision of the preparation of product to assure that product is not adulterated or misbranded; (3) separation of establishment operations for product certified for export from product that is not certified; (4) requirements for sanitation at certified establishments and for the sanitary handling of product; (5) official controls over condemned materials; (6) a Hazard Analysis Critical Control Point (HACCP) system; and (7) any other requirements found in the FMIA and its implementing regulations.

In addition to a foreign country's legal authority and regulatory requirements, the inspection program must achieve a level of public health protection equivalent to that achieved by the U.S. inspection program. Specifically, the inspection program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) competent, qualified inspectors; (4) enforcement and certification; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements required by the regulations in Subchapter F—Mandatory Inspection of Fish of the Order Siluriformes and Products of Such Fish, which cross-references 9 CFR 327.2(a)(2)(i).

Annually, the foreign country certifies the establishments as having met the required standards and notifies FSIS about establishments that are certified or removed from certification (9 CFR 557.2, cross-referencing 9 CFR 327.2(a)(3)).

Evaluation of the PRC Siluriformes Fish Inspection System

As discussed in the proposed rule (83 FR 47524), in March 2017, based on the PRC's request, FSIS conducted a document review of the PRC's Siluriformes fish inspection system to determine whether that system was equivalent to that of the United States. Based on its review of the submitted documentation, which included the PRC's laws, regulations, and inspection procedures, FSIS concluded that the PRC's inspection system is equivalent to those of the United States for raw Siluriformes fish products, specifically Siluriformes fish that fall within the FSIS product categories ''Raw Product—Intact'' and ''Raw Product—Non-Intact.'' Both product categories are defined in the ''FSIS Product Categorization'' document, which was developed to assist foreign governments in accurately identifying the type of meat and poultry products exported to the U.S. This document can be found on the FSIS website at: *https://www.fsis.usda.gov/shared/PDF/FSIS_Product_Categorization.pdf.*

Accordingly, from May 28 to June 4, 2018, FSIS proceeded with an initial on-site audit of the PRC's Siluriformes fish inspection system. The purpose of the on-site audit was to verify whether the PRC's General Administration of Customs (GACC), the Central Competent Authority (CCA) for food inspection, effectively implemented a Siluriformes fish inspection system equivalent to that

of the United States. The PRC currently exports only raw Siluriformes fish to the United States.

The audit did not identify any deficiencies that represented an immediate threat to public health, but did identify deficiencies that could lead to product contamination if not adequately addressed. In the audit exit meeting, GACC committed to address the findings as presented. For more detailed information on FSIS's evaluation of the PRC's Siluriformes fish inspection system see the proposed rule (83 FR 47524) and for the full audit report, go to: *https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports.*

From November 26 through December 13, 2018, FSIS performed a follow-up audit in response to the deficiencies identified in the initial on-site audit. During the initial audit, FSIS was only able to observe processing in two out of the six audited establishments. In the follow-up audit, the FSIS auditors visited seven out of ten establishments exporting products to the United States at that time. At the time of the follow-up audit, all seven establishments were processing Siluriformes fish. The FSIS auditors observed the production of Siluriformes fish, in addition to the implementation of corrective actions to the inspection system deficiencies noted during the initial on-site audit. FSIS did not identify any deficiencies that represented an immediate threat to public health and has determined that the proposed corrective actions are adequate. For the full audit report, go to: *https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports.*

Final Rule

After considering the comments received on the proposed rule, discussed below, FSIS concludes that the PRC's Siluriformes fish inspection system is equivalent to the United States inspection. Therefore, FSIS is amending its Siluriformes fish inspection regulations to list as the People's Republic of China as a country eligible to export Siluriformes fish to the United States. As stated above, under FSIS's Siluriformes fish import regulations, the PRC must certify to FSIS that those establishments that wish to export Siluriformes fish to the United States are operating under requirements equivalent to those of the United States (9 CFR 557.2(a)).

Although a foreign country may be listed in FSIS regulations as eligible to export Siluriformes fish to the United States, the exporting country's products must also comply with all other applicable requirements of the United States. Accordingly, Siluriformes fish exported to the United States from the PRC will continue to be subject to re-inspection by FSIS at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS will continue to conduct other types of re-inspection activities, such as taking product samples for laboratory analysis to detect drug and chemical residues and pathogens, as well as to identify product species and composition. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of the U.S. Food and Drug Administration (FDA)), depending on the violation. FSIS import re-inspection activities can be found on the Agency's website at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/port-of-entry-procedures.*

Responses to Comments

FSIS received 29 comments from individuals, Siluriformes fish and fish product producers from the PRC and the United States, trade associations, a commercial workers union, a frozen storage corporation, and a consumer interest group. The issues raised in the comments and the Agency responses are summarized below.

The Effectiveness of the PRC's Inspection System and Ongoing Verification of Compliance

Comment: Comments from six individual consumers, a U.S. Siluriformes fish and fish products producer, a labor group, two trade associations, and a consumer group questioned whether the PRC's Siluriformes fish inspection system was truly equivalent to that of the United States, and whether Siluriformes fish processed under that system would be safe for consumption in the United States. One of the two trade association that questioned whether the PRC's regulatory and inspections systems are equivalent to that of the United States submitted peer-reviewed articles concerning the use of antibiotics in aquaculture.

Response: FSIS made its equivalence determination for the PRC's Siluriformes fish inspection system based on sound science and in accordance with U.S. international obligations and its own equivalence process. FSIS has an in-depth and rigorous equivalence process, through which it systematically determines whether a foreign country's inspection system achieves a level of public health protection equivalent to that achieved by the U.S. inspection system. Accordingly, the equivalence process does not require the exporting country to develop and implement the same procedures as those of the United States. Once a country is considered to have an equivalent food safety inspection system, the FSIS equivalence process includes performing an annual records review and on-going on-site audits of the country's inspection system at least every three years to verify whether the country's inspection system continues to be equivalent to FSIS's inspection system.

Regarding antibiotic residues as discussed above, FSIS performs an annual records review for each country that has been deemed to have an equivalent inspection system to that of the United States which includes, in part, a review of the country's sampling and testing for residues; in short, FSIS annually verifies the adequacy of each equivalent country's reside testing program. In addition, FSIS conducts point-of-entry re-inspection of all imported Siluriformes fish, which can include product sampling and testing for microbial, chemical and other hazards. FSIS may conduct laboratory analysis for the detection of chemical residues that may result from the use of drugs and pesticides, or from incidents involving environmental contaminants. FSIS analyzes imported Siluriformes fish for over 100 chemical compounds, which include drugs, aminoglycosides, antifungal drugs, metals and pesticides. Products that pass re-inspection are stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they are refused entry into U.S. commerce and must be re-exported, destroyed, or converted to animal food.

On-Site Audit

Comment: The commercial workers union and the consumer interest group expressed concerns over the deficiencies found during the initial on-site audit and the number of PRC establishments audited.

Response: The results of the initial on-site audit, conducted from May 28 through June 4, 2018, were shared with the PRC's CCA. The CCA provided corrective actions to address the deficiencies that were deemed adequate by FSIS.

On November 26 through December 13, 2018, FSIS performed a follow-up audit of the PRC's food safety system governing fish and fish products of the order Siluriformes, in response to the deficiencies identified during the initial on-site audit (May 28 through June 4, 2018). During the initial audit, FSIS was only able to observe processing of Siluriformes fish in two out of the six audited establishments. In the follow-up audit, the FSIS auditors visited seven out of the ten establishments that then exported products to the United States. At the time of this audit, all seven establishments were processing Siluriformes fish. The FSIS auditors observed the processing of Siluriformes fish products, in addition to the implementation of corrective actions to the inspection system deficiencies noted during the initial on-site audit. FSIS did not identify any deficiencies that represented an immediate threat to public health and determined that the proposed corrective actions were adequate.

It is important to note that FSIS equivalence determinations are based on the foreign country's inspection system, not on an individual establishment's system. To be eligible to export Siluriformes fish to the United States, the foreign country's inspection system must ensure that establishments preparing these products for export to the United States comply with requirements equivalent to those of the FMIA and supporting regulations. The PRC's inspection system meets these requirements. The foreign country certifies the establishments as meeting the required standards and notifies FSIS about establishments that are certified or removed from certification. The PRC's inspection system currently meets all these requirements. FSIS will verify that the system continues to meet requirements through annual CCA submissions, on-going audits, and point-of-entry re-inspection and sampling and testing.

Executive Orders (E.O.s) 12866 and 13563

E.O. 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Expected Costs of the Final Rule

This final regulatory impact analysis updates the preliminary regulatory impact analysis by including the most recent year's (2018) trade data. As shown in Table 1, in 2018, the PRC accounted for approximately 5.9 percent of Siluriformes fish imports and represented only 3.6 percent of Siluriformes fish consumption in the United States. The final rule is not expected to change the PRC's market share or to impose any cost on industry or consumers, because the final rule will maintain historical trade.

TABLE 1—SUMMARY OF SILURIFORMES SALES *

	2014	2015	2016	2017	2018	5 Year average
	Millions of Dollars					
Total U.S. Imports [1]	$346.66	$351.13	$405.61	$381.89	$547.10	$406.48
Total U.S. Domestic Production [2]	$351.94	$363.61	$385.99	$379.71	$360.40	$368.33
Total U.S. Exports [1]	$4.00	$4.95	$4.80	$6.18	$3.89	$4.76
Total U.S. Consumption [3]	$694.60	$709.79	$786.80	$755.43	$903.61	$770.04
Total U.S. Imports from the PRC [1]	$36.19	$32.06	$37.46	$38.35	$32.20	$35.25
The PRC as % of U.S. Imports	10.4%	9.1%	9.2%	10.0%	5.9%	8.7%
The PRC as % of U.S. Domestic Production	10.3%	8.8%	9.7%	10.1%	8.9%	9.6%
The PRC as % of U.S. Consumption	5.2%	4.5%	4.8%	5.1%	3.6%	4.6%

Data Source: U.S. Census Bureau Trade Data.

* Numbers in table may not sum to totals due to rounding.

[1] Import and Export Data Accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/gats/default.aspx/.*

[2] U.S. Production Data Accessed from USDA National Agricultural Statistics Service: Quick Stats: *https://quickstats.nass.usda.gov/results/6F6BAB14-7014-365B-ACEA-CA35C184329B?pivot=short_desc.*

[3] U.S. Consumption data is assumed to equal Imports + Domestic Production − Exports.

Expected Benefits of the Final Rule

This final rule will maintain the Siluriformes fish trade between the United States and the PRC and its associated benefits. As shown in Table 2, the United States is the PRC's largest foreign customer of Siluriformes fish, purchasing on average 60 percent of their total frozen catfish and frozen catfish fillets exports from 2016 to 2018. As shown in Table 1, the U.S. consumes more Siluriformes fish than it produces. U.S. production meets approximately half of U.S. total demand. Maintaining current trade flows will help keep consumer prices for Siluriformes fish affordable and meet the large U.S. demand for these products. Additionally, the PRC provides several species of Siluriformes fish that are not produced domestically, allowing for greater product diversity and consumer choice.

TABLE 2—CHINESE SILURIFORMES EXPORT MARKET SHARE BY COUNTRY

Partner country	USD in millions			Percent share		
	2016	2017	2018	2016	2017	2018
World	$50.43	$41.34	$28.74	100	100	100
United States	35.92	27.32	11.98	71	66	42

Data Source: Global Trade Atlas—International Import and Export Commodity Trade Data (Numbers reported by Chinese Customs) Commodity: 030324—Catfish, Frozen and 030462—Catfish Fillets, Frozen.
FSIS downloaded the data from *https://www.gtis.com*, and it will be available upon request.

Regulatory Flexibility Act Assessment

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this final rule will not have a significant economic impact on a substantial number of small entities in the United States, because, as stated above, the final rule will maintain existing trade. The trade volume is expected to remain within historical bounds, with little or no effect on U.S. establishments, regardless of size.

Executive Order (E.O.) 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this final rule facilitates regulatory cooperation with foreign governments. Therefore, this final rule is an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this final rule. Foreign countries wanting to export Siluriformes fish to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and the implementing regulations are equivalent to those of the United States. FSIS provided the PRC with a questionnaire, referred to as the Self Reporting Tool (SRT), asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0153. The rule contains no other paperwork requirements.

Executive Order (E.O.) 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purpose of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizens access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 557

Imported products.

For the reasons set out in the preamble, FSIS amends 9 CFR part 557 as follows:

PART 557—IMPORTATION

■ 1. The authority citation for part 557 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

■ 2. In § 557.2, revise paragraph (b)(1) to read as follows:

§ 557.2 Eligibility of foreign countries for importation of fish and fish products into the United States.

* * * * *

(b)(1) It has been determined that fish and fish products from the following countries covered by foreign inspection certificates of the country of origin as required by § 557.4, are eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by

the applicable provisions of this part: People's Republic of China.

* * * * *

Done at Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–24055 Filed 11–4–19; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 557

[Docket No. FSIS–2018–0029]

RIN 0583–AD74

Eligibility of the Socialist Republic of Vietnam To Export Siluriformes Fish and Fish Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Siluriformes fish inspection regulations to list the Socialist Republic of Vietnam (Vietnam) as a country eligible to export Siluriformes fish and fish products to the United States. FSIS has reviewed Vietnam's laws, regulations, and inspection system as implemented and has determined that Vietnam's Siluriformes fish inspection system is equivalent to the system that the United States has established under the Federal Meat Inspection Act (FMIA) and its implementing regulations. Under this final rule, only raw Siluriformes fish and fish products produced in certified Vietnamese establishments are eligible for export to the United States. All such products are subject to re-inspection at U.S. points-of-entry by FSIS inspectors.

DATES: *Effective Date:* December 5, 2019.

FOR FURTHER INFORMATION CONTACT: Terri Nintemann, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2018, FSIS proposed to amend its regulations at 9 CFR 557.2(b)(1) to add Vietnam as a country eligible to export Siluriformes fish to the United States (83 FR 47528) (for convenience, in this final rule, ''Siluriformes fish and fish products'' will be shortened to ''Siluriformes fish''). Although Vietnam has been allowed to export these products to the United States under the conditions described in the proposed rule (83 FR 47529), Vietnam is not currently listed in the Code of Federal Regulations (CFR) as eligible to export Siluriformes fish to the United States. FSIS proposed to add Vietnam to the regulations as eligible to export such products after the Agency conducted a documentary review of Vietnam's laws, regulations, and Siluriformes fish inspection system, as well as an in-country audit of the system, and determined that it is equivalent to the U.S. system established under the FMIA and its implementing regulations. This final rule is consistent with the provisions of the proposed rule.

Statutory and Regulatory Basis for Final Action

As explained in the proposed rule (83 FR 45729), Siluriformes fish are an amenable species under the FMIA (21 U.S.C. 601(w)(2)). The FMIA prohibits importation into the United States of adulterated or misbranded meat and meat food products (21 U.S.C. 620). Under the FMIA and its implementing regulations, Siluriformes fish imported into the United States must be from foreign countries that maintain an inspection system that ensures compliance with requirements equivalent to all the inspection, sanitary, quality, species verification, and residue standards requirements in the United States, and all other provisions of the FMIA that are applied to official establishments in the United States. The regulatory requirements for foreign countries to become eligible to export Siluriformes fish to the United States are provided in 9 CFR 557.2, which cross-references 9 CFR 327.2, the regulations for the import of other products also subject to the FMIA.

Section 557.2(a) (cross-referencing 9 CFR 327.2(a)(1), (a)(2)(i), (a)(2)(ii)(C)–(I), (a)(2)(iii)–(iv), and (a)(3)), requires a foreign country's inspection system be authorized by legal authority that imposes requirements equivalent to those of the United States, specifically with respect to: (1) Official controls by the national government over establishment construction, facilities, and equipment; (2) direct official supervision of the preparation of product to assure that product is not adulterated or misbranded; (3) separation of establishments operations for product certified for export from product that is not certified; (4) requirements for sanitation at certified establishments and for sanitary handling of product; (5) official controls over condemned materials; (6) a Hazard Analysis Critical Control Point (HACCP) system; and (7) any other requirements found in the FMIA and its implementing regulations.

In addition to a foreign country's legal authority and regulatory requirements, the inspection program must achieve a level of public health protection equivalent to that achieved by the U.S. inspection program. Specifically, the inspection program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) competent, qualified inspectors; (4) enforcement and certification; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements required by the regulations in Subchapter F—Mandatory Inspection of Fish of the Order Siluriformes and Products of Such Fish, which cross-references 9 CFR 327.2(a)(2)(i).

Annually, the foreign country certifies the establishments as fully meeting the required standards and notifies FSIS about establishments that are removed from certification (9 CFR 557.2, cross-referencing 9 CFR 327.2(a)(3)).

Evaluation of Vietnam's Siluriformes Fish Inspection System

As discussed in the proposed rule (83 FR 47530), in August 2017, based on Vietnam's request, FSIS conducted a document review of Vietnam's Siluriformes fish inspection system to determine whether that system was equivalent to that of the United States. Based on its review of the submitted documentation, which included Vietnam's laws, regulations, and inspection procedures, FSIS concluded that Vietnam's inspection system is equivalent to that in the United States for raw Siluriformes fish products, specifically Siluriformes fish that fall within the FSIS product categories ''Raw Product—Intact'' and ''Raw Product—Non-Intact.'' Both product categories are defined in the ''FSIS Product Categorization'' document, which was developed to assist foreign governments in accurately identifying the type of meat and poultry products exported to the U.S., this document can be found on the FSIS website at: *https://www.fsis.usda.gov/shared/PDF/FSIS_Product_Categorization.pdf.*

Accordingly, in May 2018, FSIS proceeded with an on-site audit of Vietnam's Siluriformes fish inspection system. The purpose of the on-site audit was to verify whether Vietnam's National Agro-Forestry-Fisheries Quality Assurance Department (NAFIQAD), the central competent authority for food inspection, effectively implemented a Siluriformes fish inspection system equivalent to that of the United States. The audit of Vietnam's Siluriformes fish inspection system did not identify any deficiencies that represented an immediate threat to public health.

For more detailed information on FSIS's evaluation of Vietnam's Siluriformes fish inspection system, see the proposed rule (83 FR 47528) and for the full audit report, go to: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports.*

Final Rule

After considering the comments received on the proposed rule, discussed below, FSIS concludes that Vietnam's Siluriformes fish inspection system is equivalent to the United States inspection system. Therefore, FSIS is amending its Siluriformes fish inspection regulations to list Vietnam as a country eligible to export Siluriformes fish to the United States (9 CFR 557.2(b)(1)). As is stated above, under FSIS's Siluriformes fish import regulations, Vietnam must certify to FSIS that those establishments that wish to export Siluriformes fish to the United States are operating under requirements equivalent to those of the United States (9 CFR 557.2(a)).

Although a foreign country may be listed in FSIS regulations as eligible to export Siluriformes fish to the United States, the exporting country's products must also comply with all other applicable requirements of the United States. Accordingly, Siluriformes fish exported from Vietnam will continue to be subject to re-inspection by FSIS at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS will continue to conduct other types of re-inspection activities, such as taking product samples for laboratory analysis to detect drug and chemical residues and pathogens, as well as to identify product species and composition. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days and must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of the Food and Drug Administration (FDA)), depending on the violation. The import re-inspection activities can be found on the FSIS website at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/port-of-entry-procedures.*

Responses to Comments

FSIS received 41 comments from fish and seafood importers, distributors, processors and wholesalers; trade associations; fish exporting companies; a domestic processor; a consumer interest group; a commercial workers union; a foreign country; a cold storage warehousing firm; and individuals. The issues raised in the comments and the Agency responses are summarized below.

The Effectiveness of Vietnam's Inspection System and Ongoing Verification of Compliance

Comment: Comments from two trade associations, the commercial workers union, the consumer interest group, the domestic processor, and an individual questioned whether Vietnam's Siluriformes fish inspection system is equivalent to that of the United States and whether Siluriformes fish processed under that system would be safe for consumption in the United States. One of the two trade associations submitted peer-reviewed articles concerning the use of antibiotics in aquaculture, citing several peer-reviewed articles.

Response: FSIS made its equivalence determination based on sound science and in accordance with U.S. international obligations. FSIS has an in-depth and rigorous equivalence process, through which it systematically determines whether a foreign country's inspection system achieves a level of public health protection equivalent to that achieved in the United States. Accordingly, the equivalence process does not require the exporting country to develop and implement the same procedures as those of the United States. Once a country is considered to have an equivalent food safety system, the FSIS equivalence process includes performing an annual records review and on-site audits at least every three years to verify whether the country's system continues to be equivalent to FSIS's system.

Regarding antibiotic residues, and as discussed above, FSIS conducts Point-of-Entry reinspection of all imported Siluriformes fish, which can include product sampling and testing for microbial, chemical and other hazards. FSIS may conduct laboratory analysis for the detection of drug and chemical residues that may have resulted from the use of drugs and pesticides, or from incidents involving environmental contaminants. FSIS analyzes imported Siluriformes fish for over 100 compounds which includes drugs, aminoglycosides, antifungal drugs, metals and pesticides. Products that pass re-inspection are stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they are refused entry into U.S. commerce and must be exported, destroyed, or converted to animal food.

On-Site Audit

Comment: The commercial workers union and the consumer interest group expressed concerns over the deficiencies found during the on-site audit and the limited number of Vietnamese establishments audited. In addition, these two commenter expressed concern over the number of establishments that were delisted prior to the on-site audit.

Response: The results of the on-site audit were shared with Vietnam's Central Competent Authority (CCA). Notably, FSIS auditors did not identify any findings that represented a potential to endanger public health. The CCA has made changes to the inspection system to address the findings.

Prior to the on-site audit, Vietnam requested that FSIS remove 49 establishments from the list of 62 establishments eligible to export Siluriformes fish, because these establishments had not exported significant amounts of product to the United States. The remaining 13 exporting establishments have actively exported to the United States since FSIS assumed regulatory jurisdiction over Siluriformes fish; the others did not export a significant amount of product. FSIS' on-site audit included eight of the 13 establishments and two cold storage facilities, which export most of the Siluriformes fish to the United States.

It is important to note that FSIS equivalence determinations are based on the foreign country's inspection system, not on an individual establishment's system. The foreign country's inspection system must ensure that establishments preparing Siluriformes fish for export to the United States comply with requirements equivalent to those of the FMIA and the supporting regulations. Vietnam's inspection system meets these

requirements. The foreign country certifies the establishments as meeting the required standards and notifies FSIS about establishments that are certified or removed from certification.

Executive Orders (E.O.s) 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Expected Costs of the Final Rule

This final regulatory impact analysis updates the preliminary regulatory impact analysis by including the most recent year's (2018) trade data. This final rule is not expected to have quantified costs because it maintains the existing trade in Siluriformes fish between the United States and Vietnam. The United States has historically imported Siluriformes fish from Vietnam. Therefore, market conditions, including prices and supplies, are not expected to be impacted by this rule. From 2014 to 2018, 91.2 percent of total Siluriformes fish imports to the United States were from Vietnam, Table 1. Vietnamese Siluriformes fish accounted for 48.1 percent of U.S. consumption, Table 1.

TABLE 1—SUMMARY OF SILURIFORMES FISH SALES *

	2014	2015	2016	2017	2018	5 Year average
	Millions of Dollars					
Total U.S. Imports [1]	$346.66	$351.13	$405.61	$381.89	$547.10	$406.48
Total U.S. Domestic Production [2]	$351.94	$363.61	$385.99	$379.71	$360.40	$368.33
Total U.S. Exports [1]	$4.00	$4.95	$4.80	$6.18	$3.89	$4.76
Total U.S. Consumption [3]	$694.60	$709.79	$786.80	$755.43	$903.61	$770.04
Total U.S. Imports from [1] Vietnam	$309.53	$318.40	$367.65	$342.96	$514.76	$370.66
Vietnam as % of U.S. Imports	89.3%	90.7%	90.6%	89.8%	94.1%	91.2%
Vietnam as % of U.S. Domestic Production	87.9%	87.6%	95.3%	90.3%	142.8%	100.6%
Vietnam as % of U.S. Consumption	44.6%	44.9%	46.7%	45.4%	57.0%	48.1%

Data Source: U.S. Census Bureau Trade Data.
* Numbers in table may not sum to totals due to rounding.
[1] Import and Export Data Accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://appfas.usda.gov/gats/default.aspx/.*
[2] U.S. Production Data Accessed from USDA National Agricultural Statistics Service: Quick Stats: *https://quickstats.nass.usda.gov/results/6F6BAB14-7014-365B-ACEA-CA35C184329B?pivot=short_desc/.*
[3] U.S. Consumption data is assumed to equal Imports + Domestic Production − Exports.

Expected Benefits of the Final Rule

This final rule may qualitatively benefit industry by maintaining market stability and continued opportunity for trade between the United States and Vietnam. Consumers in the United States will continue to have access to more choices when purchasing Siluriformes fish, specifically of the family Pangasius, which are native to Vietnam, The People's Republic of China, and other neighboring Asian nations. Pangasius have a different flavor, color and texture than other Siluriformes fish found in the United States. The Siluriformes fish trade between the United States and Vietnam will maintain choices for consumers in the United States.[1]

[1] Sea Grant Delaware Seafood Health Facts: Making Smart Choices accessed on 7/27/2018. Available at: *https://www.seafoodhealthfacts.org/description-top-commercial-seafood-items/pangasius.*

Regulatory Flexibility Act Assessment

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this final rule will not have a significant economic impact on a substantial number of small entities in the United States because, as stated above, the final rule will maintain existing trade.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this final rule facilitates regulatory cooperation with foreign governments. Therefore, this final rule is an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this final rule. Foreign countries wanting to export Siluriformes fish to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided Vietnam with a questionnaire, referred to as the SRT (Self Reporting Tool), asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0153. The final rule contains no other paperwork requirements.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 557

Imported products.

For the reasons set out in the preamble, FSIS amends 9 CFR part 557 as follows:

PART 557—IMPORTATION

■ 1. The authority citation for part 557 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

§ 557.2 [Amended]

■ 2. Section 557.2 is amended by adding ''Socialist Republic of Vietnam'' in alphabetical order to the list of countries at the end of paragraph (b)(1).

Done at Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–24057 Filed 11–4–19; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 557

[Docket No. FSIS–2018–0031]

RIN 0583–AD74

Eligibility of Thailand To Export Siluriformes Fish and Fish Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Siluriformes fish inspection regulations to list Thailand as a country eligible to export Siluriformes fish and fish products to the United States. FSIS has reviewed Thailand's laws, regulations, and inspection system as implemented and has determined that Thailand's Siluriformes fish inspection system is equivalent to the system that the United States has established under the Federal Meat Inspection Act (FMIA) and its implementing regulations. Under this final rule, only raw Siluriformes fish and fish products produced in certified Thailand establishments are eligible for export to the United States. All such products are subject to re-inspection at U.S. points-of-entry by FSIS inspectors.

DATES: *Effective Date:* December 5, 2019.

FOR FURTHER INFORMATION CONTACT: Terri Nintemann, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2018, FSIS proposed to amend its regulations at 9 CFR 557.2(b)(1) to add Thailand as a country eligible to export raw Siluriformes fish to the United States (83 FR 47532) (for convenience, in this final rule, ''Siluriformes fish and fish products'' will be shortened to ''Siluriformes fish''). Although Thailand has been allowed to export these products to the United States under the conditions described in the proposed rule (83 FR 47533), Thailand is not currently listed in the Code of Federal Regulations (CFR) as eligible to export Siluriformes fish to the United States. FSIS proposed to add Thailand to the regulations as eligible to export such products after the Agency conducted a documentary review of Thailand's laws, regulations, and Siluriformes fish inspection system, as well as an in-country audit of the system, and determined that Thailand's Siluriformes fish inspection system is equivalent to the U.S. system established under the FMIA and its implementing regulations. This final rule is consistent with the provisions of the proposed rule.

Statutory and Regulatory Basis for Final Action

As explained in the proposed rule (83 FR 45733), Siluriformes fish are an amenable species under the FMIA (21 U.S.C. 601(w)(2)). The FMIA prohibits importation into the United States of adulterated or misbranded meat and meat food products (21 U.S.C. 620). Under the FMIA and its implementing regulations, Siluriformes fish imported into the United States must be from foreign countries that maintain an inspection system that ensures compliance with requirements equivalent to the inspection, sanitary, quality, species verification, and residue standards requirements in the United

States, and all other provisions of the FMIA that are applied to official establishments in the United States. The regulatory requirements for foreign countries to become eligible to export Siluriformes fish to the United States are provided in 9 CFR 557.2, which cross-references 9 CFR 327.2, the regulations for the import of other products also subject to the FMIA.

Section 557.2(a) (cross-referencing 9 CFR 327.2(a)(1), (a)(2)(i), (a)(2)(ii)(C)–(I), (a)(2)(iii)–(iv), and (a)(3)), requires that a foreign country's inspection system be authorized by legal authority that imposes requirements equivalent to those of the United States, specifically with respect to: (1) Official controls by the national government over establishment construction, facilities, and equipment; (2) direct official supervision of the preparation of product to assure that product is not adulterated or misbranded; (3) separation of establishment operations for product certified for export from product that is not certified; (4) requirements for sanitation at certified establishments and for the sanitary handling of product; (5) official controls over condemned materials; (6) a Hazard Analysis Critical Control Point (HACCP) system; and (7) any other requirements found in the FMIA and its implementing regulations.

In addition to a foreign country's legal authority and regulatory requirements, the inspection program must achieve a level of public health protection equivalent to that achieved by the U.S. inspection program. Specifically, the inspection program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) competent, qualified inspectors; (4) enforcement and certification; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements required by the regulations in Subchapter F—Mandatory Inspection of Fish of the Order Siluriformes and Products of Such Fish, which cross-references 9 CFR 327.2(a)(2)(i).

Annually, the foreign country certifies the establishments as fully meeting the required standards and notifies FSIS about establishments that are removed from certification (9 CFR 557.2, cross-referencing 9 CFR 327.2(a)(3)).

Evaluation of Thailand's Siluriformes Fish Inspection System

As discussed in the proposed rule (83 FR 47534), in April 2017, based on Thailand's request, FSIS conducted a document review of Thailand's Siluriformes fish inspection system to determine whether that system was equivalent to that of the United States. Based on its review of the submitted documentation, which included Thailand's laws, regulations, and inspection procedures, FSIS concluded that Thailand's inspection system is equivalent to that in the United States for raw Siluriformes fish products, specifically Siluriformes fish that fall within the FSIS product categories ''Raw Product—Intact'' and ''Raw Product—Non-Intact.'' Both product categories are defined in the ''FSIS Product Categorization'' document, which was developed to assist foreign governments in accurately identifying the type of meat and poultry products exported to the U.S., this document can be found on the FSIS website at: *https://www.fsis.usda.gov/shared/PDF/FSIS_Product_Categorization.pdf.*

Accordingly, between May 7 and 11, 2018, FSIS proceeded with an initial on-site audit of Thailand's Siluriformes fish inspection system. The purpose of the on-site audit was to verify whether Thailand's Department of Fisheries (DOF), the Central Competent Authority (CCA) for food inspection, effectively implemented a Siluriformes fish inspection system equivalent to that of the United States. FSIS's initial audit included four slaughter and processing establishments that were exporting Siluriformes fish to the U.S., at that time, and one cold storage facility connected to one of the establishments. However, during the visits to the four establishments, none were processing Siluriformes fish for export to the United States. As discussed in the proposed rule (83 FR 47534), the May 2018 audit identified several deficiencies that FSIS requested the DOF address. FSIS sent the DOF the draft final audit report, and advised that for FSIS to verify the full implementation of Thailand's Siluriformes fish inspection system, it would be necessary to schedule a follow-up on-site audit. FSIS conducted the follow-up audit between August 27 and 31, 2018, visiting the three certified processing establishments exporting Siluriformes fish to the United States at that time (Thailand had delisted one processing establishment prior to the follow-up audit). Based on the follow-up audit, FSIS concluded that, as implemented, Thailand's inspection system for Siluriformes fish is equivalent to that of the United States.

For more detailed information on FSIS's evaluation of Thailand's Siluriformes fish inspection system, see the proposed rule (83 FR 47534) and for the full audit reports, go to: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports.*

Final Rule

After considering the comments received on the proposed rule, discussed below, FSIS concludes that Thailand's Siluriformes fish inspection system is equivalent to the United States inspection system. Therefore, FSIS is amending its Siluriformes fish inspection regulations to list Thailand as a country eligible to export Siluriformes fish to the United States (9 CFR 557.2(b)(1)). As is stated above, under FSIS's Siluriformes fish import regulations, Thailand must certify to FSIS that those establishments that wish to export Siluriformes fish to the United States are operating under requirements equivalent to those of the United States (9 CFR 557.2(a)).

Although a foreign country may be listed in FSIS regulations as eligible to export Siluriformes fish to the United States, the exporting country's products must also comply with all other applicable requirements of the United States. Accordingly, Siluriformes fish exported from Thailand will continue to be subject to re-inspection by FSIS at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS will continue to conduct other types of re-inspection activities, such as taking product samples for laboratory analysis to detect drug and chemical residues and pathogens, as well as to identify product species and composition. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of the U.S. Food and Drug Administration (FDA)), depending on the violation. FSIS import re-inspection activities can be found on the Agency's website at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-*

affairs/importing-products/port-of-entry-procedures.

Responses to Comments

FSIS received 23 comments from producers, a distributor, trade associations, a consumer interest group, a commercial workers union, and individuals. The issues raised in the comments and the Agency responses are summarized below.

The Effectiveness of Thailand's Inspection System and Ongoing Verification of Compliance

Comment: Comments from trade associations, the consumer interest group, the commercial workers union, and individuals questioned whether Thailand's Siluriformes fish inspection system is equivalent to that of the United States and whether Siluriformes fish processed under that system would be safe for consumption in the United States. One of the trade associations submitted peer-reviewed articles concerning the use of antibiotics in aquaculture in Southeast Asia.

Response: FSIS made its equivalence determination for Thailand's Siluriformes fish inspection system based on sound science and in accordance with U.S. international obligations and its own equivalence process. FSIS has an in-depth and rigorous equivalence process, through which it systematically determines whether a foreign country's inspection system achieves a level of public health protection equivalent to that achieved by the U.S. inspection system. Accordingly, the equivalence process does not require the exporting country to develop and implement the same procedures as those of the United States. Once a country is considered to have an equivalent food safety inspection system, the FSIS equivalence process includes performing an annual records review and on-going on-site audits of the country's inspection system at least every three years to verify whether the country's inspection system continues to be equivalent to FSIS's inspection system.

Regarding antibiotic residues as discussed above, FSIS performs an annual records review for each country that has been deemed to have an equivalent inspection system to that of the United States which includes, in part, a review of the country's sampling and testing for residues; in short, FSIS annually verifies the adequacy of each equivalent country's residue testing program. In addition, FSIS conducts point-of-entry re-inspection of all imported Siluriformes fish, which can include product sampling and testing for microbial, chemical and other hazards. FSIS may conduct laboratory analysis for the detection of chemical residues that may result from the use of drugs and pesticides, or from incidents involving environmental contaminants. FSIS analyzes imported Siluriformes fish for over 100 chemical compounds, which include drugs, aminoglycosides, antifungal drugs, metals and pesticides. Products that pass re-inspection are stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they are refused entry into U.S. commerce and must be exported, destroyed, or converted to animal food.

On-Site Audit

Comment: The commercial workers union and the consumer interest group expressed concerns over the deficiencies found during the initial on-site audit and the number of Thai establishments audited. In addition, these two commenters expressed concern over the number of establishments that were delisted prior to the initial on-site audit.

Response: The findings of the initial on-site audit conducted May 7–11, 2018, were shared with Thailand's CCA. The audit findings did not present the potential to endanger public health, as most of the findings involved recordkeeping and technical clarifications. The CCA committed to addressing the audit findings as presented within 30 days.

On August 27–31, 2018, FSIS performed a follow-up audit of Thailand's food safety system governing Siluriformes fish. The purpose of the follow-up audit was to observe the production of Siluriformes fish, in addition to the implementation of corrective actions to the deficiencies noted during the initial May 2018 audit. Prior to the August 2018 follow-up audit, Thailand had requested that FSIS remove five establishments from the list of eight establishments eligible to export Siluriformes fish to the United States. FSIS's August 2018 on-site follow-up audit included the three remaining establishments; all three establishments were processing Siluriformes fish and were found to be performing all operations in accordance with equivalence documentation submitted to FSIS by Thailand's CCA.

It is important to note that FSIS equivalence determinations are based on the foreign country's inspection system, not on an individual establishment's system. To be eligible to export Siluriformes fish to the United States, the foreign country's inspection system must ensure that establishments preparing these products for export to the United States comply with requirements equivalent to those of the FMIA and supporting regulations. Thailand's inspection system meets these requirements. The foreign country certifies the establishments as meeting the required standards and notifies FSIS about establishments that are certified or removed from certification. Thailand's inspection system currently meets all these requirements. FSIS will verify that the system continues to meet requirements through annual CCA submissions, on-going audits, and point-of-entry re-inspection and sampling and testing.

Low-Trade Volume in Thailand and the Associated Cost to the United States Economy

Comment: Three individuals noted that stopping trade with Thailand would not impact the United States' economy because Thailand has a low-trade volume. These commenters also argued that continuing trade with Thailand would negatively impact public health and therefore the economy. However, several producers supporting the proposed rule stated that continued trade with Thailand would maintain certainty in the market.

Response: FSIS agrees that Thailand has a low-trade volume, but disagrees that continued trade with Thailand will negatively impact public health or the economy. As mentioned above, FSIS ensures a foreign country's inspection system achieves an equivalent level of public health protection to FSIS's inspection system through a robust equivalence process and point-of-entry re-inspection and testing. Because Thailand is likely to continue to maintain a low trade volume, continued trade with Thailand will not harm the economy and will instead provide continued market stability that is beneficial to the U.S. economy.

Executive Orders (E.O.s) 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a ''non-significant'' regulatory action under section 3(f) of

E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Expected Costs of the Final Rule

This final regulatory impact analysis updates the preliminary regulatory impact analysis by including the most recent year's (2018) trade data. This final rule is not expected to have quantified costs because it maintains the existing trade in Siluriformes fish between the United States and Thailand. The United States has historically imported Siluriformes fish from Thailand. Therefore, market conditions, including prices and supplies, are not expected to be impacted by this rule. From 2014 to 2018, total sales from Thailand Siluriformes fish imports only averaged 0.016 percent of U.S. domestic production, and constituted only 0.008 percent of total U.S. consumption, Table 1. In 2016, although Thailand exported 3.5 times more Siluriformes fish to the United States than their average, Thai Siluriformes fish still only accounted for 0.027 percent of total United States Siluriformes fish consumption, Table 1. These amounts are unlikely to have any substantive effect on U.S. production or prices for domestically harvested Siluriformes fish.

TABLE 1—SUMMARY OF SILURIFORMES SALES

	2014	2015	2016	2017	2018	5 Year average
	Millions of Dollars					
Total U.S. Imports [1]	$346.66	$351.13	$405.61	$381.89	$547.10	$406.48
Total U.S. Domestic Production [2]	$351.94	$363.61	$385.99	$379.71	$360.40	$368.33
Total U.S. Exports [1]	$4.00	$4.95	$4.80	$6.18	$3.89	$4.76
Total U.S. Consumption [3]	$694.60	$709.79	$786.80	$755.43	$903.61	$770.04
Total U.S. Imports [1] from Thailand	$0.02	$0.01	$0.21	$0.04	$0.02	0.06
Thailand as % of U.S. Imports	0.005%	0.003%	0.052%	0.010%	0.004%	0.015%
Thailand as % of U.S. Domestic Production	0.005%	0.003%	0.054%	0.010%	0.006%	0.016%
Thailand as % of U.S. Consumption	0.002%	0.002%	0.027%	0.005%	0.002%	0.008%

Data Source: U.S. Census Bureau Trade Data.
* Numbers in table may not sum to totals due to rounding.
[1] Import and Export Data Accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/gats/default.aspx/.*
[2] U.S. Production Data Accessed from USDA National Agricultural Statistics Service: Quick Stats: *https://quickstats.nass.usda.gov/results/6F6BAB14-7014-365B-ACEA-CA35C184329B?pivot=short_desc/.*
[3] U.S. Consumption data is assumed to equal Imports + Domestic Production − Exports.

Expected Benefits of the Final Rule

This final rule will result in the continued opportunity for trade between the United States and Thailand. The volume of trade is likely to continue to be low and is expected to have little or no effect on U.S. Siluriformes fish production or prices. U.S. consumers, however, are expected to continue to have access to more choices when purchasing Siluriformes fish. The rule will, therefore, maintain choices for U.S. consumers and promote economic competition.[1]

Regulatory Flexibility Act Assessment

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this final rule will not have a significant economic impact on a substantial number of small entities in the United States, because, as stated above, the final rule will maintain existing trade. The trade volume is expected to remain within historical bounds, with little or no effect on all U.S. establishments, regardless of size.

[1] Sea Grant Delaware Seafood Health Facts: Making Smart Choices accessed on 7/27/2018 *https://www.seafoodhealthfacts.org/description-top-commercial-seafood-items/pangasius.*

Executive Order (E.O.) 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this final rule facilitates regulatory cooperation with foreign governments. Therefore, this final rule is an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this final rule. Foreign countries wanting to export Siluriformes fish to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and the implementing regulations are equivalent to those of the United States. FSIS provided Thailand with a questionnaire, referred to as the Self Reporting Tool (SRT), asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0153. The final rule contains no other paperwork requirements.

Executive Order (E.O.) 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS

web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 557

Imported products.

For the reasons set out in the preamble, FSIS amends 9 CFR part 557 as follows:

PART 557—IMPORTATION

■ 1. The authority citation for part 557 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

§ 557.2 [Amended]

■ 2. Section 557.2 is amended by adding ''Thailand'' in alphabetical order to the list of countries at the end of paragraph (b)(1).

Done at Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–24058 Filed 11–4–19; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 214 November 5, 2019

Part III

The President

Federal Register
Vol. 84, No. 214
Tuesday, November 5, 2019

Presidential Documents

Title 3—

The President

Proclamation 9956 of October 31, 2019

Critical Infrastructure Security and Resilience Month, 2019

By the President of the United States of America

A Proclamation

Our Nation's infrastructure is critical to supporting our economy, national security, and way of life. We live in an increasingly interconnected world, where our infrastructure networks—from power grids to communication platforms—take on an added degree of importance in the day-to-day lives of every American. During Critical Infrastructure Security and Resilience Month, we recognize that securing and enhancing the resilience of our infrastructure plays an important role in keeping our Nation safe and fueling our economy. That is why my Administration is persistently investing in resilient infrastructure systems and networks that alleviate risks, thwart attacks, and minimize disruptions to the productivity and well-being of our citizens.

When our infrastructure is threatened, our physical and economic security comes under duress as the systems that provide us with essentials like food, clean water, electricity, healthcare, and communication are placed in jeopardy. America's infrastructure relies on an interdependent environment in which cyber and physical systems converge. A disruption in one area can quickly impact multiple infrastructure sectors to create disruptions across communities, States, and the Nation. The threats we face today—human-made, technological, and natural—are more complex and more diverse than at any point in our history. Determined international adversaries and malign actors continue to target America's infrastructure networks, and severe weather and natural disasters present frequent hazards.

In response to these threats, my Administration has remained committed to strategic investments to secure and enhance the resilience of our infrastructure. In March, I issued an Executive Order on Coordinating National Resilience to Electromagnetic Pulses, and my Administration released the National Space Weather Strategy and Action Plan. Together, these measures enable us to anticipate and adapt to the risks posed by electromagnetic threats while seeking to identify the fundamental infrastructure systems, assets, and networks that protect the American people, the homeland, and the American way of life. These measures also help us promote American prosperity, preserve peace through strength, and advance American influence. To guarantee our status as the world leader in securing infrastructure and making it more resilient to disruption, I signed legislation in 2018 creating the Cybersecurity and Infrastructure Security Agency (CISA) within the Department of Homeland Security. Along with other partners across governments and private industry, CISA is leading the Federal effort to strengthen our Nation's critical cyber and physical infrastructure and bolster America's ability to construct secure, resilient infrastructure systems for the future.

It is also imperative that foreign strategic competitors do not gain access to our critical supply chain. To fully protect our critical infrastructure, we must secure the process of delivering products, supplies, and materials from supplier to the manufacturer to the customer. We cannot allow our Nation's supply chain to be built and maintained with components from foreign adversaries that may weaken our ability to provide the functions and services upon which Americans depend each day. In May, I issued

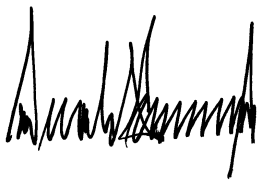
an Executive Order on Securing the Information and Communications Technology and Services Supply Chain to address concerns about foreign adversaries creating and exploiting vulnerabilities in our information technology and communications networks. These networks are critical to the effective operations of our government and businesses. I encourage owners and operators of those networks to take heightened measures to protect every aspect of their organizations' security and resiliency by maintaining business continuity and emergency management plans, protecting against cyberattacks and insider threats, and reducing vulnerabilities due to natural disasters. Working together, public and private owners and operators of critical infrastructure must continue to take actions to mitigate these threats.

Critical infrastructure owners and operators, local and State governments, and the Federal Government all have critical roles in reducing the risks to our Nation's critical infrastructure. Owners and operators ensure that critical infrastructure is properly run and maintained, while local governments certify that critical infrastructure is sited properly and built to the latest codes and standards. As the States provide oversight for operations, the Federal Government, in turn, must provide support for all of these needs.

While Federal, State, and local governments are doing everything within their power to protect our infrastructure, today's threats also require cooperation from partners in the private sector to ensure maximum security and enhance our resilience. Every American has a role to play in this endeavor, whether it is through investing in technologies to make our systems more resilient, making and exercising preparedness plans, or simply remaining alert and raising concerns to potential threats. This month, we reaffirm our commitment to developing new strategies to address the ever-present and increasingly complex threats facing our Nation's infrastructure, and we pay tribute to the men and women who work diligently to safeguard the United States from any threat.

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 November 2019 as Critical Infrastructure Security and Resilience Month. I call upon the people of the United States to recognize the importance of protecting our Nation's infrastructure and to observe this month with appropriate measures to enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24274
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9957 of October 31, 2019

National Adoption Month, 2019

By the President of the United States of America

A Proclamation

Every child is precious and deserves a loving family of his or her own. During National Adoption Month, we honor the adoptive parents who provide homes—and the invaluable gifts of hope, love, and stability—to thousands of infants, children, and youth. We also recognize the dedicated professionals who work tirelessly to sustain their families through compassion and hard work.

The families who provide forever homes to children and youth in the foster care system should be recognized for their loving adoptions. While preliminary data show a fortunate decline in the foster care population over the past year, foster care numbers are still too high. In Fiscal Year (FY) 2018 alone, nearly 690,000 children and youth were served by the foster care system. While there were more than 63,000 adoptions from the foster care system in FY 2018, thousands of children and youth are still waiting to find permanent, loving families. The need is urgent. We must improve efforts to recruit new adoptive families while faithfully supporting, equipping, and encouraging those families who have already taken one of our Nation's young people into their home to love and care for.

This month, we also reaffirm our commitment to our Nation's most vulnerable and valuable resource—our children, especially those at greatest risk of neglect. Thousands of older youth in the foster care system desperately need the ongoing guidance and support of a nurturing family. Too many of our youth transition to the next stage of their lives without stable family connections or positive role models to help them navigate the challenges of adulthood. Additionally, children with disabilities and those with siblings typically wait longer for permanent placement in a home. These children need a family who will provide a foundation of acceptance, mentorship, and unconditional love that will motivate and help them to reach their full potential in life.

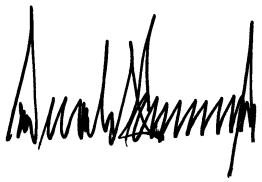
The health and well-being of all young people is a top priority in my Administration, and a strong family bond is one of life's greatest joys and richest blessings. That is why we will continue to champion adoption as a profound way to transform lives, strengthen families, and ignite hope across America. In addition, we will protect our country's long and vital tradition of faith-based agencies helping children find their forever homes. We are committed to ensuring that faith-based agencies are able to unite children with families while following their deeply held religious beliefs.

During this annual observance of National Adoption Month, we acknowledge that every child—born and unborn—is uniquely gifted by their Creator and endowed with both potential and immeasurable value. We recognize the loving and devoted individuals who are part of God's plan for every child by taking on the role of a parent through adoption. We also celebrate the beautiful families created through the generous act of adoption, and we hold all the children and youth still waiting for their forever families close in our hearts and lift them up in our prayers.

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 November 2019 as National Adoption Month. I encourage all Americans to observe this month by helping children and youth in need of a permanent home secure a more promising future with a forever family and enter adulthood with the love and connections we all need.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24275
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9958 of October 31, 2019

National American History and Founders Month, 2019

By the President of the United States of America

A Proclamation

Over 243 years ago, our Founders gathered in Philadelphia, Pennsylvania, at Independence Hall to sign the Declaration of Independence, enshrining in the heart of every American a bedrock principle that all men are ''endowed by their Creator with certain unalienable Rights.'' Throughout our Nation's history, countless men and women have boldly defended this principle, often making the ultimate sacrifice on battlefields here and in every corner of the world. From overthrowing tyrannical rule in the Revolutionary War to liberating Europe from Nazi control during World War II, the United States will always remain steadfast in our dedication to promoting liberty and justice over the evil forces of oppression and indignity. This same truth fuels us in our efforts to confront the challenges that face our citizens here at home, including protecting precious religious liberties, securing our Nation's borders, and combating the opioid crisis. During National American History and Founders Month, we celebrate the vibrant American spirit that drives our Nation to remarkable heights.

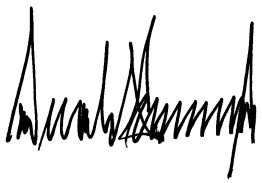
Our Nation's patriots and heroes have always been guided by the belief that America must shine brightly out into the world. Indeed, this conviction has been at the forefront of the American experiment since our founding. This month, we acknowledge the tremendous strides we have made as a people and recognize that our democracy's survival is dependent upon a well-informed electorate. To ensure the success of our future generations, we pledge to continue to build a more educated citizenry. We heed the warning of President Ronald Reagan that ''freedom is never more than one generation away from extinction.''

To continue safeguarding our freedom, we must develop a deeper understanding of our American story. Studying our country's founding documents and exploring our unique history—both the achievements and challenges—is indispensable to the future success of our great Nation. For more than two centuries, the American experiment in self-government has been the antithesis to tyranny, and our Constitution has secured the blessings of liberty. From the triumphs of war to the victories of the Civil Rights Movement to placing the first ever man on the moon 50 years ago, our Nation has time and again exhibited an unparalleled ability to achieve extraordinary feats. To continue to advance liberty and prosperity, we must ensure the next generation of leaders is steeped in the proud history of our country.

On this inaugural National American History and Founders Month, I encourage all citizens to reflect upon the defining tenets that have always united us as Americans, while also taking time to honor those who have contributed to the great story of our country. As Americans, may we forever strive to preserve their legacy for generations 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 November 2019 as National American History and Founders Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24277
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9959 of October 31, 2019

National Entrepreneurship Month, 2019

By the President of the United States of America

A Proclamation

Throughout our American story, the trailblazers who have been willing to take great risks and chart new frontiers have changed the landscape of business, science, and technology, often setting the global pace for productivity and prosperity. Their relentless pursuit of success has launched new industries, created millions of jobs, and fueled an economy that is the envy of the world. During National Entrepreneurship Month, we recognize the men and women who have turned their passion into innovation, and we pledge to continue fostering economic freedom so the next generation of transformational entrepreneurs is able to unlock their full potential.

Our Nation is home to the greatest entrepreneurs in the world because we provide an environment in which they can thrive. American entrepreneurs have access to an unmatched research and development infrastructure that includes 8 of the world's 10 most innovative universities. Additionally, our Nation's highly developed private capital markets and other alternative investment models provide our entrepreneurs with access to necessary funding to develop and commercialize their revolutionary ideas. We have a strong intellectual property rights system, and my Administration has aggressively responded to the theft of American intellectual property in order to protect our entrepreneurs' most valuable assets—their ideas and innovation.

To help entrepreneurs succeed, my Administration continues to reduce unnecessary regulations, bolstering investment and improving global competitiveness for small business owners. We have cut 8.5 regulatory actions for every significant regulatory action added, setting up our country's bold risk-takers for success rather than hindering their undertakings with burdensome red tape. These efforts have helped create ripe conditions for entrepreneurs to flourish, encouraging business expansion and increasing hiring for startups.

The United States economy and the American people are also continuing to reap the benefits of the Tax Cuts and Jobs Act that I signed into law during my first year in office. Entrepreneurs are one of the biggest beneficiaries of this landmark legislation, which delivered much-needed tax relief for small businesses. Certain pass-through businesses are now able to deduct 20 percent of their qualified business income and business owners can fully deduct the cost of new capital investments, endowing start-ups and small businesses with a greater percentage of their hard-earned revenue for further investment. Additionally, this historic tax reform legislation includes a key provision that creates Opportunity Zones, helping to facilitate the necessary funding for entrepreneurs to start new businesses and create jobs in economically depressed communities. The Opportunity Zone tax incentive will unlock resources for entrepreneurs to substantially grow and scale their businesses at unprecedented rates while simultaneously reinvigorating struggling communities.

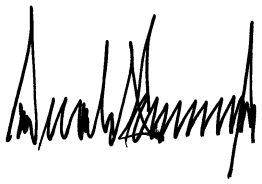
The results of my Administration's tax reform and focused deregulation have been tremendous. Since my election, the American economy has added more than 6.4 million jobs, and last month the unemployment rate dropped

to a half-century low. We remain committed to extending economic opportunities further and ensuring that the economic boom currently taking place across our country provides opportunities for all Americans.

The qualities needed to start and grow new businesses—industriousness, courage, determination, hard work, and a penchant for innovation—are those which continue to define the American spirit and push humankind to new levels of discovery and success. This month, we recognize the countless American entrepreneurs who embody these values and continue to redefine the limits of what is possible. Together, we celebrate their drive and boundless tenacity, and we reaffirm our support for them as they continue to shape and strengthen our great Nation.

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 November 2019 as National Entrepreneurship Month. I call upon all Americans to commemorate this month with appropriate programs and activities and to celebrate November 19, 2019, as National Entrepreneurs' Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24279
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9960 of October 31, 2019

National Family Caregivers Month, 2019

By the President of the United States of America

A Proclamation

Selfless Americans across our country consistently dedicate themselves and their resources to providing ailing and aging loved ones with the care and support they need to live in their own homes and communities. Throughout National Family Caregivers Month, we pause to recognize the men and women who tirelessly work to improve the quality of life for Americans in need of care.

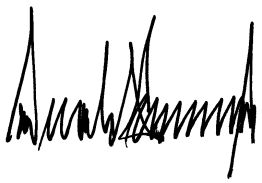
Caregivers help their family members live fulfilling lives by providing vital assistance in domestic, financial, and medical affairs. The responsibility of serving and supporting another person can be challenging, and the strength and compassion exhibited by caregivers is one of the greatest manifestations of genuine love we witness in this world. Their unrelenting support enables family members to live with dignity.

As we honor the innumerable sacrifices made in homes across the country, we affirm our resolve to ensure all caregivers are given the resources and respect they deserve. This support requires a commitment from community stakeholders and Federal, State, and local governments to equip caregivers with training and tools to use to safeguard their family's health and security. This past summer, the Administration for Community Living held the inaugural meetings of the Family Caregiving Advisory Council and the Advisory Council to Support Grandparents Raising Grandchildren. The strategies, informational resources, and technical assistance being developed by these councils will strengthen our Nation's support for family caregivers and their work enhancing the lives of millions of Americans.

This November, we recognize and honor the commitment of those who exemplify the essential American tenets of devotion to family and compassion toward those who matter most in our lives. Through caregivers' generosity, our vulnerable communities are able to fully experience the many blessings of our great Nation.

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 November 2019 as National Family Caregivers Month. I encourage all Americans to reach out to those who provide care for their family members, friends, and neighbors in need, to honor and thank them.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24280
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9961 of October 31, 2019

National Native American Heritage Month, 2019

By the President of the United States of America

A Proclamation

American Indians and Alaska Natives continue to make immeasurable contributions to our Nation. We honor the sacrifices many tribal citizens have made in defense of our great Nation. We also recognize that our culture is more vibrant because of the special government-to-government relationship between the United States and Indian tribes. During National Native American Heritage Month, we reaffirm our commitment to work with tribal communities to address serious issues affecting them and to help protect their rich and diverse heritage.

Few acts of service better embody the intrepid spirit of our country than the willingness to answer the call of duty and defend our Nation's precious liberties. American Indians and Alaska Natives have done so at one of the highest rates of any ethnic group in the United States, serving admirably in every branch of our military. Their legacy of service spans the history of our Nation, and includes the Indian Home Guard during the Civil War and the Code Talkers during World War II. Today, 31,000 courageous men and women from American Indian and Alaska Native communities serve on active duty in our Armed Forces.

My Administration is committed to advancing shared priorities with tribal governments and leaders to address their most pressing challenges, including the devastating threat posed by drugs. In 2018, the Department of Interior's Opioid Reduction Task Force seized more than 3,200 pounds of illegal narcotics with an estimated value of approximately $9 million. In addition to our efforts to address the drug crisis, we are focused on healthcare access, delivery, and safety. In March 2019, my Administration created a task force charged with developing recommendations to protect Native American children receiving care at Indian Health Service clinics, and we look forward to continuing these efforts.

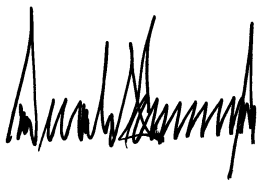
Additionally, my Administration began a series of public safety listening sessions with American Indian and Alaska Native tribal leaders and communities. These sessions, which are called *Reclaiming our Native Communities,* are focused on strategies to address the trend of violence and illicit activity affecting these populations and have addressed the problem of missing and murdered indigenous women. So far, these sessions have been held in Sacaton, Arizona; Nome and Bethel, Alaska; and Rapid City, South Dakota. Through collaboration with Federal, State, local, and tribal partners, we will continue working to address these and other issues that American Indian and Alaska Native communities face today.

My Administration has also played a role in helping to preserve the proud heritage of American Indians and Alaska Natives. In October, my Administration was pleased to secure the commitment of President Sauli Niinisto of Finland to facilitate the historic return of ancestral remains and artifacts to an assembly of 26 pueblos and tribes in the Mesa Verde region. More than 600 items of cultural patrimony will be returned to this region, which includes areas of Utah, Colorado, and New Mexico.

During National Native American Heritage Month, we affirm our commitment to working toward a society that fosters a deeper understanding and appreciation for the diversity of culture and history of the 573 federally recognized American Indian and Alaska Native nations in our country. This November and every month, we celebrate the culture and heritage of these remarkable Americans who deeply enrich the quality and character of our Nation.

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 November 2019 as National Native American Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities and to celebrate November 29, 2019, as Native American Heritage Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24281
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9962 of October 31, 2019

National Veterans and Military Families Month, 2019

By the President of the United States of America

A Proclamation

The United States is a beacon of hope, freedom, and opportunity to people around the world. The Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen who fight to defend our liberty embody courage, patriotism, and loyalty. These patriots safeguard the values that keep our great Nation strong. During National Veterans and Military Families Month, we honor and express our deep appreciation for these brave men and women and their families.

Throughout our Nation's history, our military men and women have boldly answered the call of duty to defend our Nation's independence and precious liberties, risking life and limb for their fellow Americans. At the inception of our Republic, General George Washington and his men struggled to keep the spark of faith and hope alive through the scourge of disease and the brutal winter months at Valley Forge. One hundred and forty years later during World War I, American service members shed blood in the trenches of Western Europe, leaving a legacy of heroism and courage under fire at places like Belleau Wood and the River Somme. Earlier this year, we commemorated the 75th anniversary of D-Day, when thousands of American heroes charged through a hail of machine gun fire and left their gallant mark on the pages of history. The courage of our men and women who served and fought during that war freed the world from the shroud of tyranny and ended the oppression of millions across the globe. In the decades since World War II, Americans have remained at the vanguard in defending freedom around the world, and our service members, veterans, and their families continue to spearhead this noble undertaking.

America's military men and women and their families are vital to the security and prosperity of our Nation. We have a responsibility to protect and serve those who have made countless sacrifices for love of country. As President Lincoln once said: ''Honor to the soldier and sailor everywhere, who bravely bears his country's cause. Honor, also, to the citizen who cares for his brother in the field and serves, as best he can, the same cause.'' We also recognize the integral role our more than 2.6 million military family members play in supporting our Armed Forces and contributing to their mission. While our military men and women are serving at home or overseas, it is our duty to provide their families with the resources they need to thrive in our communities. Accordingly, under my Administration, the Department of Defense has created programs for military families that support access to quality childcare and spousal employment and promote occupational licensure reciprocity between States.

We also recognize that our obligation to our military men and women does not end after their time in uniform. We are a Nation that leaves no American behind, and that includes our veterans and their family members. For this reason, I was pleased to sign into law the VA MISSION Act of 2018, which helps provide all veterans with access to trusted, high-quality healthcare. I have also made it a top priority of my Administration to address the tragedy of veteran suicide, establishing the President's Roadmap to Empower Veterans and End a National Tragedy of Suicide (PREVENTS). The PREVENTS initiative will encourage a better understanding

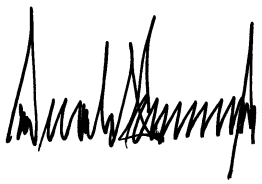
of veteran suicide and work across all levels of government and the private sector to implement strategies that will strengthen support networks for veterans and their families.

My Administration remains committed to providing our veterans and their families with the financial resources they have rightfully earned. Last year, we secured $201.1 billion in funding for the Department of Veterans Affairs (VA)—the most in the history of the VA—including $8.6 billion to support mental health services for veterans. Additionally, I recently directed the Department of Education to discharge some types of Federal student loans owed by totally and permanently disabled veterans. This unprecedented action lessens the financial burden for our seriously wounded warriors who have sacrificed so much for our country, and it underscores the appreciation and undying loyalty of the American people.

Each warrior who fights for our Nation, along with their families, has earned our eternal gratitude, and I ask that all Americans thank and support them. Together, we remain committed to fostering a national community of support for these brave heroes and their families.

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 November 2019 as National Veterans and Military Families Month. I encourage all communities, all sectors of society, and all Americans to acknowledge and honor the service, sacrifices, and contributions of veterans and military families for what they have done and for what they do every day to support our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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.



[FR Doc. 2019–24285
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Executive Order 13897 of October 31, 2019

Improving Federal Contractor Operations by Revoking Executive Order 13495

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.,* and in order to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

Section 1. *Revocation of Prior Order.* Executive Order 13495 of January 30, 2009 (Nondisplacement of Qualified Workers Under Service Contracts), which requires that successor Federal contractors in certain circumstances offer a right of first refusal of employment to employees employed under the predecessor contract, is hereby revoked.

Sec. 2. *Agency Implementation.* The Secretary of Labor (Secretary), the Federal Acquisition Regulatory Council, and heads of executive departments and agencies shall, consistent with law, promptly move to rescind any orders, rules, regulations, guidelines, programs, or policies implementing or enforcing Executive Order 13495.

Sec. 3. *Enforcement.* The Secretary shall terminate, effective immediately, any investigations or compliance actions based on Executive Order 13495.

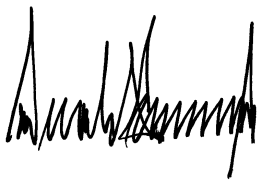
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, 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 31, 2019.

[FR Doc. 2019–24288
Filed 11–4–19; 11:15 am]
Billing code 3295–F0–P

Reader Aids

Federal Register

Vol. 84, No. 214

Tuesday, November 5, 2019

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

58595–59288 1
59289–59524 4
59525–59710 5

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

3 CFR

Proclamations:
9956 59693
9957 59697
9958 59699
9959 59701
9960 59703
9961 59705
9962 59707

Executive Orders:
13495 (Revoked by EO 13897) 59709
13896 58595
13897 59709

Administrative Orders:
Notices:
Notice of October 31, 2019 59287
Presidential Determinations:
No. 2020–01 of October 18, 2019 59519
No. 2020–02 of October 18, 2019 59521

7 CFR

966 59289

9 CFR

557 ..... 59678, 59682, 59685

10 CFR

Proposed Rules:
810 59315

12 CFR

3 59230
50 59230
217 ..... 59032, 59230
225 59032
238 59032
242 59032
243 59194
249 59230
252 59032
324 59230
329 59230
381 59194

14 CFR

39 59292
71 ..... 58599, 58600
97 ..... 59294, 59296

Proposed Rules:
39 ..... 58634, 58636, 58638, 59315

21 CFR

Proposed Rules:
1 59452
11 59452
16 59452
129 59452

26 CFR

1 59297

Proposed Rules:
1 59318

29 CFR

Proposed Rules:
778 59590

31 CFR

1010 59302

Proposed Rules:
150 59320

33 CFR

100 ..... 59525, 59526
165 59526

Proposed Rules:
165 59602

34 CFR

600 58834
602 58834
603 58834
654 58834
668 58834
674 58834

40 CFR

52 59527
63 58601
180 58623
282 58627

Proposed Rules:
52 ..... 58641, 59325, 59327, 59331
63 58936
170 58666
282 58674
721 59335

42 CFR

600 59529

44 CFR

64 59548

45 CFR

102 59549
1169 59313

47 CFR

1 59567

Proposed Rules:
1 59605
73 59605

49 CFR

614 59568

50 CFR
17.....59570
648.....59588
679.....59588

Proposed Rules:
648.....59349

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 4, 2019

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.